

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 vs. NO: 16-CR-3308 JB
6 GASPAR LEAL
7 Defendant.

9 VOLUME 1

10 Transcript of Trial Proceedings before The
11 Honorable James O. Browning, United States District
12 Judge, Albuquerque, Bernalillo County, New Mexico,
13 commencing on July 22, 2019.

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 Norman Cairns

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1 THE COURT: All right. Everyone be seated.
2 All right. Mr. Hurtado, do you have an opening
3 statement on behalf of the Government?

4 MR. HURTADO: Yes, sir, Your Honor. May it
5 please the Court.

6 THE COURT: Does anyone wish to invoke the
7 rule? Mr. Bowles?

8 MR. BOWLES: Your Honor, I would invoke the
9 rule, but I don't think there are any other witnesses
10 in the courtroom.

11 THE COURT: All right. Do you wish to have
12 it invoked or you want to --

13 MR. BOWLES: I would invoke the rule.

14 THE COURT: All right. It's a rule of law
15 that witnesses may be excluded from the courtroom so
16 that they cannot hear the testimony of other
17 witnesses. This rule does not apply to parties or
18 expert witnesses. The rule of exclusion has been
19 invoked in this case and all witnesses to whom the
20 rule applies will be required to remain outside of
21 the courtroom until they are called to testify.

22 Witnesses excluded from the courtroom
23 should not discuss with other witnesses their
24 testimony before they or the other witnesses testify,
25 but they may discuss their testimony with the

1 lawyers.

2 All right, Mr. Hurtado, if you have an
3 opening statement on behalf of the United States.

4 MR. HURTADO: Yes, sir. May it please the
5 Court.

6 THE COURT: Mr. Hurtado.

7 MR. HURTADO: Counsel for the defense,
8 ladies and gentlemen of the jury, good afternoon.
9 Please allow me to reintroduce myself. My name is
10 Samuel Hurtado, and I represent the United States
11 Attorney's Office. With me today is my colleague
12 Mr. Norm Cairns. Joining us at the prosecution table
13 is Mr. Mike Ramos. He is an ATF agent and the lead
14 investigator in this case.

15 This is a case in which all of the evidence
16 to be presented will point squarely in the direction
17 of one man, the defendant, Mr. Gaspar Leal. As you
18 now know, the defendant is charged with conspiracy
19 and distributing methamphetamine.

20 The background to this case began in May of
21 2016. In May of 2016, the ATF initiated a criminal
22 investigation of the defendant. The ATF decided to
23 use one of its long-time confidential informants to
24 help in the ATF's investigation of the defendant.

25 A confidential informant is a person who

1 supplies information to the police about criminal
2 activity. In this case, the ATF decided to use a
3 confidential informant in an undercover capacity to
4 investigate the defendant in this case. In May of
5 2016, the ATF learned that the defendant was
6 self-employed as a barber. So what the ATF decided
7 to do was instruct the confidential informant to
8 place a phone call to the defendant for the purpose
9 of scheduling an appointment for a haircut.

10 The confidential informant did as he was
11 instructed by the ATF. The confidential informant
12 called the defendant and scheduled an appointment for
13 a haircut. A couple of days later, defendant called
14 the confidential informant and invited the
15 confidential informant to his apartment for the
16 haircut appointment. There at the defendant's
17 apartment, the confidential informant for the first
18 time met with the defendant in person in a
19 face-to-face capacity.

20 A couple of months later, in July of 2016,
21 the defendant ended up in jail. On July 21, 2016,
22 the defendant, from jail, made a phone call to the
23 confidential informant in an attempt to set up a drug
24 deal with the confidential informant. During that
25 phone call, the defendant suggested to the

1 confidential informant that he, the confidential
2 informant, should reach out to this drug dealer that
3 the defendant knew.

4 A few days later, on July 4, 2016, and
5 again from jail, this time accompanied by another
6 inmate at the jail, the defendant placed a phone call
7 to the confidential informant, again with the purpose
8 of setting up a drug deal with the confidential
9 informant. This time the defendant suggested another
10 drug dealer for the confidential informant to call.
11 The defendant suggested that the confidential
12 informant call a drug dealer named Daniel Carmona.
13 The defendant gave drug dealer Daniel Carmona's phone
14 number to the confidential informant and instructed
15 the confidential informant to call drug dealer
16 Carmona for the purpose of buying methamphetamine.

17 The confidential informant did as he was
18 instructed. The confidential informant on July 25,
19 2016, placed a phone call to drug dealer Daniel
20 Carmona. Daniel Carmona agreed to sell 2 ounces of
21 methamphetamine to the confidential informant. The
22 confidential informant and Daniel Carmona agreed to
23 meet later that same day, July 25, 2016.

24 So the confidential informant, with the
25 authorization of the ATF, went out to meet with

1 Daniel Carmona. The confidential informant was
2 accompanied by an ATF undercover agent, and together
3 the confidential informant and the ATF undercover
4 agent purchased 2 ounces of methamphetamine from
5 Daniel Carmona.

6 Several days later, on August 3, 2016, the
7 confidential informant again called Daniel Carmona
8 with the intention of buying 2 ounces
9 methamphetamine. Daniel Carmona again agreed to sell
10 2 ounces to the confidential informant. Once again
11 the confidential informant, again accompanied by the
12 ATF undercover agent, met with Daniel Carmona. Once
13 Daniel Carmona produced to the undercover agent 2
14 ounces of methamphetamine, the ATF converged on the
15 scene and placed Daniel Carmona under arrest.

16 The prosecution intends to present evidence
17 that will show that the drug deals between Daniel
18 Carmona, the confidential informant, and the ATF
19 undercover agent could not have occurred without the
20 assistance of the defendant, Mr. Gaspar Leal,
21 providing drug dealer Daniel Carmona's phone number
22 to the confidential informant in this case.

23 The United States intends to present
24 different forms of evidence throughout this trial.
25 You will have the opportunity to review the drug

1 exhibits that were seized in connection with this
2 case. Those drug exhibits include the
3 methamphetamine that Daniel Carmona sold to the
4 confidential informant and the undercover agent on
5 July 25, 2016. It also includes the methamphetamine
6 that Daniel Carmona sold to the confidential
7 informant and the ATF undercover agent on August 3,
8 2016.

9 You will also have the opportunity to
10 listen to recorded jail calls that were made from the
11 defendant to the confidential informant with the
12 purpose of setting up a drug deal. You will also
13 have the opportunity to listen to the testimony of
14 the eyewitnesses in this case, which include the ATF
15 agents who conducted this investigation.

16 You will hear first from Special Agent Mike
17 Ramos, the lead investigator in this case. He will
18 provide you with some of the background that you will
19 need to understand this case and how this
20 investigation came to be.

21 You will also hear from the ATF undercover
22 agent who participated in the undercover deal with
23 the confidential informant on July 25 and August 3
24 with Daniel Carmona.

25 You will also hear from another ATF agent

1 named Jovianne Demas. Agent Demas deposited money in
2 the defendant's jail account when he was locked up.
3 What you will learn is that it is common practice for
4 drug dealers to expect some form of payment in
5 exchange for setting up a drug deal like the kind
6 that occurred in this case.

7 You will also have the opportunity to
8 listen to the testimony of the confidential informant
9 himself. I will not be referring -- the prosecution
10 will not be referring to the confidential informant
11 by name. Given the nature of the work that the
12 confidential informant does for a living, the
13 prosecution will not use his real name. Instead, the
14 prosecution will refer to him as confidential
15 informant.

16 The confidential informant is from Chicago.
17 He has worked with the ATF since approximately
18 October of 2012. Since October of 2012, the ATF has
19 paid the confidential informant approximately
20 \$125,550. And just to clarify, that is over the
21 course of seven years. For the confidential
22 informant's work in this particular case throughout
23 the summer of 2016, the confidential informant was
24 paid \$13,500. The confidential informant has a prior
25 conviction from 2012 for DWI. He's also been

1 arrested for driving on a suspended or a revoked
2 license.

3 The ATF will explain to you why it uses
4 confidential informants in investigations of this
5 type. It is anticipated that the ATF will explain to
6 you that confidential informants play a vital role in
7 investigations of this type.

8 At the end of the prosecution's
9 case-in-chief, my colleague, Mr. Cairns, will return
10 to address you during what's called the closing
11 argument phase of the trial. During the closing
12 arguments, Mr. Cairns will review with you all of the
13 evidence that the United States, the prosecution, has
14 presented you to convince you beyond a reasonable
15 doubt that the defendant is guilty of the claims
16 charged.

17 Ladies and gentlemen, at this early stage
18 of the trial, I submit to you that based on the
19 evidence that the prosecution will present, the
20 defendant -- you will be able to find that he is
21 guilty beyond a reasonable doubt. Thank you.

22 THE COURT: Thank you, Mr. Hurtado.

23 Mr. Bowles, do you have an opening
24 statement for Mr. Leal?

25 MR. BOWLES: Yes, Your Honor. Thank you.

1 THE COURT: Mr. Bowles.

2 MR. BOWLES: Thank you, Judge, Counsel.

3 Ladies and gentlemen, good afternoon. I
4 think you're going to find that by the end of this
5 trial that the Government successfully did create and
6 set up two drug transactions and they did accomplish
7 what they set out to do and they got the drugs. And
8 we're not going to contest that. You're going to see
9 these. They did drug deals.

10 These drug deals, though, they did with
11 Daniel Carmona. And one of the important things I
12 ask you to consider when you go through this trial is
13 everything they did to set up these transactions,
14 everything they did with it, it all involved somebody
15 else. And I'll get to the point involving Mr. Leal.

16 But the point of the transfer of the
17 drugs -- and the charge is distribution and
18 conspiracy to distribute -- and the judge is going to
19 instruct you on what distribution means. And it's
20 common sense. You distribute by giving somebody
21 something else. There is an instruction on that.

22 Mr. Leal wasn't involved in any of that.
23 He wasn't there on the two transactions, he didn't
24 distribute the drugs. That was Daniel Carmona that
25 did that. And you're going to also hear these calls,

1 and I ask you, please, to listen to them closely and
2 to pay close attention to them, because they're all
3 going to involve other people. They're going to
4 involve a man named Jose, and there is going to be
5 some other people the confidential informant talks
6 to. But the only thing you're going to find that
7 Mr. Leal will have done is give him a name.

8 Now, you heard he's in jail, and he's in
9 jail with another individual, I think you're going to
10 hear evidence, a man named Mr. Arreola. You're going
11 to hear these drugs are somebody else's. They're not
12 Mr. Leal's. I believe you'll hear evidence to that
13 effect. And Mr. Arreola is in jail and these calls
14 are being made and the confidential informant is
15 setting up with the agent to do deals with Daniel
16 Carmona. It's not involving Mr. Leal. He's not
17 going to be present. He's not going to be
18 distributing.

19 You're also going to hear that to do that,
20 to get these drugs -- and they use this confidential
21 informant; you'll hear about him; you'll see him
22 testify. He's been doing this since 2012. And what
23 he does, he goes across -- he's here and he comes in
24 and they pay him a bunch of money, and he gets with
25 people to set up deals. And you heard and I'm going

1 to ask him on the stand and see what he says. But
2 you heard the Government prosecutor tell you he's
3 made \$125,000 over the past seven years working for
4 the Government. Pretty good pay. And what he does
5 for that money is, he goes around and he sets up
6 these deals. That's his job. And I think you're
7 going to hear when he talks about it on the stand, he
8 buys cars with it, pays for his expenses. So that's
9 his role. That's what he does.

10 And it worked. They paid him. But what it
11 worked for was to get drugs from Mr. Carmona. And
12 again, as I said in voir dire, I asked you to pay
13 close attention to Judge Browning's instructions.
14 And Judge Browning is going to give you the law at
15 the end of the case, and he's going to define for you
16 what it means to distribute narcotics and what it
17 means to be involved in that, to participate, to
18 actively assist in that process, to conspire, and all
19 those terms. He's going to define all those. And at
20 the end, there is a conspiracy between Mr. Carmona
21 and the confidential informant, and those -- the
22 agent shows up and they do two deals. But it's
23 involving those individuals.

24 And at the end of this case, based on the
25 evidence that you're going to hear and the law that

1 Judge Browning is going to give you, I ask you to
2 find Mr. Leal not guilty of the charges.

3 THE COURT: All right. Thank you,
4 Mr. Bowles.

5 Mr. Hurtado, does the Government have its
6 first witness or evidence?

7 MR. HURTADO: Yes, sir, Your Honor. The
8 United States calls Mr. Mike Ramos.

9 THE COURT: Mr. Ramos, if you'll come up
10 and stand next to the witness box, before you're
11 seated, Ms. Bevel will swear you in.

12 MICHAEL RAMOS,
13 after having been first duly sworn under oath,
14 was questioned, and testified as follows:

15 THE COURT: Mr. Ramos. Mr. Hurtado.

16 MR. HURTADO: Yes, sir.

17 THE WITNESS: Good afternoon, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. HURTADO:

20 Q. Sir, please tell us your name.

21 A. Michael Ramos.

22 Q. Where do you work?

23 A. I'm a special agent with the Bureau of
24 Alcohol, Tobacco, Firearms and Explosives.

25 Q. Is that also known as the ATF?

1 A. Yes.

2 Q. For those members of the jury who may not
3 be familiar with the ATF, can you tell us what the
4 ATF is?

5 A. We're a federal agency that -- we
6 investigate federal violations involving firearms,
7 narcotics, arson, explosive laws.

8 Q. And what is a special agent?

9 A. We're a criminal investigator for the
10 agency.

11 Q. As a law enforcement officer?

12 A. Correct.

13 Q. How long have you been an ATF agent?

14 A. It will be 17 years next month.

15 Q. Where are you assigned?

16 A. Currently in the Maryville, Indiana, field
17 office, just outside of Chicago.

18 Q. Are you familiar with an investigation that
19 took place here in Albuquerque by the ATF in 2016?

20 A. Yes, sir.

21 Q. In 2016, did you have occasion to work with
22 a confidential informant in an investigation that the
23 ATF was conducting?

24 A. Yes, sir.

25 Q. And what was your relationship to this

1 confidential informant?

2 A. I was the confidential informant's primary
3 handler. So I had day-to-day interactions with the
4 confidential informant.

5 Q. Does that mean you supervised the
6 informant?

7 A. Yes, sir.

8 Q. Can you tell the members of the jury what a
9 confidential informant is?

10 A. A confidential informant is an individual
11 that works on our behalf. We direct them into
12 neighborhoods to find us individuals that we're
13 interested in investigating.

14 Q. To clarify, a confidential informant is not
15 a law enforcement officer; is that correct?

16 A. That's correct.

17 Q. Does not carry a badge?

18 A. No, sir.

19 Q. Or a gun?

20 A. No, he does not.

21 Q. Or ATF-issued credentials of any sort?

22 A. Correct.

23 Q. Why does the ATF use a confidential
24 informant as opposed to, say, yourself, an ATF agent,
25 to go out and work the streets?

1 A. Simply put, confidential informants -- they
2 can relate to individuals that we want to investigate
3 better than we can. Our job is to affect violent
4 crime in the communities that we work and live in,
5 and confidential informants are necessary for us to
6 do that.

7 Q. With respect for the confidential informant
8 in this case, do you pay him?

9 A. Yes, sir.

10 Q. How long has this confidential informant
11 been working for the ATF?

12 A. Since October of 2012.

13 Q. Can you tell the members of the jury how
14 much the confidential informant has been paid since
15 October of 2012?

16 A. Since October of 2012, the confidential
17 informant has been paid approximately \$125,550.

18 Q. Now, that sounds like a lot of money, but
19 if you were to break it down since October 2012 to
20 now, about how much does that come out to per year?

21 A. About \$17,900 a year.

22 Q. Is it customary for the ATF to pay
23 confidential informants?

24 A. Yes, sir.

25 Q. With respect to the confidential informant

1 in this case, have you in the past, first of all,
2 worked with him because you're his handler; correct?

3 A. Correct.

4 Q. Have you found him to be reliable, in your
5 experience?

6 A. Yes.

7 Q. Accurate?

8 A. Yes.

9 Q. Complete?

10 A. Yes, sir.

11 Q. Has the ATF corroborated the information
12 that the confidential informant has supplied you in
13 the past?

14 A. Yes, sir, we have.

15 Q. Have you ever provided him with any
16 instructions that he needs to follow before you put
17 him out to work on the streets?

18 A. Yes, sir, we do.

19 Q. Tell us about that.

20 A. We advise the informants not to engage in
21 illegal activity, drug use. The informants are
22 searched before and after every transaction that we
23 do with the informants.

24 Q. Just to clarify the word "transaction," are
25 you talking about drug deals?

1 A. Drug deals, firearms transactions,
2 controlled purchases, as we call them.

3 Q. Undercover deals?

4 A. Correct.

5 Q. And why do you search them before and after
6 these deals?

7 A. We want to maintain the integrity of the
8 investigation. We search the informants for
9 excessive monies, contraband, firearms, narcotics,
10 paraphernalia.

11 Q. With respect to the confidential informant
12 in this investigation, have you ever found him to be
13 in possession of large sums of money or drugs or any
14 other contraband?

15 A. No, sir.

16 Q. To your knowledge, has he ever been
17 reprimanded by the ATF for any operations he's
18 conducted?

19 A. No, not to my knowledge.

20 Q. Have you ever known the confidential
21 informant in this case to use drugs and/or alcohol?

22 A. No, sir.

23 Q. Have you ever known him to be under the
24 influence of drugs or alcohol during an operation?

25 A. No, sir.

1 Q. If he were under the influence of drugs or
2 alcohol on an operation, what would you do as his
3 handler?

4 A. We would not move forward with that
5 transaction, first off.

6 Q. Anything else? I didn't know if I was
7 interrupting you.

8 A. No.

9 Q. Now, I want to direct your attention to the
10 investigation in this case. Can you tell the jury
11 more or less how this investigation came to be? For
12 example, how is it that the confidential informant
13 came to have contact with the defendant, Mr. Leal?

14 A. Mr. Leal was passing out business cards in
15 the city of Albuquerque. It was -- he was -- he had
16 business cards that he was a mobile barber. He
17 actually gave one of those business cards to -- at
18 the time, he was an ATF task force officer. He was
19 an Albuquerque Police Department officer at the time,
20 assigned to ATF. That task force officer gave that
21 business card to me, and I instructed the informant
22 to give Mr. Leal a call to go get a haircut and to
23 see if Mr. Leal was engaged in any sort of criminal
24 activity.

25 Q. Did the confidential informant follow your

1 instruction?

2 A. Yes, he did.

3 Q. Did he make contact with Mr. Leal, the
4 defendant?

5 A. He did.

6 Q. And what happened?

7 A. They arranged for a haircut that occurred
8 at the apartment of Mr. Leal.

9 Q. Did the confidential informant actually go
10 through and follow up by visiting Mr. Leal at his
11 apartment?

12 A. Yes, sir.

13 Q. Are you aware of the confidential informant
14 continuing this investigation in July of 2016?

15 A. Yes, sir, I am.

16 Q. And by the way, as you are participating in
17 this investigation and conducting this investigation,
18 are you having regular contact with the confidential
19 informant?

20 A. Multiple times a day.

21 Q. Multiple times a day?

22 A. Yes.

23 Q. Would it be accurate to say that the
24 confidential informant is or has to act under your
25 authorization at all times?

1 A. Yes, sir.

2 Q. To your knowledge, did he ever do anything
3 that was outside of your knowledge or your
4 authorization?

5 A. Not to my knowledge.

6 Q. Did the confidential informant have contact
7 with the defendant, Mr. Leal, in July of 2016?

8 A. Yes, sir.

9 Q. Listen very carefully to my next question.
10 In July of 2016, did the confidential informant have
11 any discussions with the defendant about drugs?

12 A. Yes, sir.

13 Q. Do you know where the defendant, Mr. Leal,
14 was in July of 2016?

15 A. He was in a correctional facility in the
16 state of New Mexico.

17 Q. Now, you as the case agent, what did you
18 decide to do with respect to the confidential
19 informant's participation in this case?

20 A. We decided to follow through with arranging
21 a narcotics transaction based on the phone number
22 that was provided by Mr. Leal to the confidential
23 informant.

24 Q. So that was a lot of information, so let's
25 go back and flesh out some more detail. You

1 indicated that Mr. Leal was in jail; correct?

2 A. Yes, sir.

3 Q. So who made the initial contact?

4 A. Mr. Leal made the initial contact with the
5 informant.

6 Q. And tell us for what purpose.

7 A. To arrange a narcotic --

8 MR. BOWLES: Object to form. I'm sorry,
9 Your Honor. Object to that question.

10 THE COURT: Overruled.

11 MR. BOWLES: Speculation.

12 THE COURT: Well, I think he can answer it.
13 Overruled.

14 BY MR. HURTADO:

15 Q. Agent, why did Mr. Leal, the defendant,
16 call the confidential informant from jail?

17 A. To arrange a narcotics transaction.

18 Q. Okay. Now, as the case agent, I imagine
19 you've had the opportunity to review the phone calls
20 that were made in connection to this case?

21 A. Yes, sir.

22 Q. Based on your training and experience, how
23 certain are you that Mr. Leal was arranging a drug
24 deal with the confidential informant, as opposed to
25 something else?

1 MR. BOWLES: And Your Honor, I'm going to
2 object. Speculation, lack of foundation.

3 THE COURT: Well, I'll let you deal with
4 this on cross as to how he knows. But I'll allow him
5 to testify. Overruled.

6 BY MR. HURTADO:

7 Q. Sir, can you answer that question, or did
8 you want me to repeat the question?

9 A. I can answer it.

10 Q. Go ahead.

11 A. We were very certain that it was a
12 narcotics transaction about to occur.

13 Q. And just to clarify one point, you yourself
14 did not have any personal contact with the defendant,
15 Mr. Leal; correct?

16 A. Never.

17 Q. You never interacted with him face-to-face?

18 A. No, sir.

19 Q. You never spoke with him on the phone;
20 correct?

21 A. No.

22 Q. Anytime the confidential informant had
23 contact with Mr. Leal, did you make sure to review
24 those contacts?

25 A. Yes, sir.

1 Q. And are the contacts that the confidential
2 informant recorded in any way?

3 A. They were all recorded.

4 Q. And please tell us how that works. Go into
5 a little bit more detail.

6 A. They were recorded because I put an app on
7 the informant's phone which automatically records
8 incoming and outgoing phone calls and text messages.

9 Q. Is there any way for that confidential
10 informant to in any way delete or tamper with the
11 recording once it's been made?

12 A. No, sir. The phone calls are on a server.
13 It's protected with the user name and password and
14 it's controlled by the ATF.

15 Q. Specifically is it controlled by you?

16 A. Correct.

17 Q. Is there any way that confidential
18 informant can have access to those recorded calls?

19 A. There is no way.

20 Q. Again, you've listened to the phone calls.
21 When you listened to those phone calls, was there
22 ever anything that indicated to you that Mr. Leal,
23 the defendant, did not know what he was doing? For
24 example, did he ever express that he was confused
25 about what it was that the confidential informant

1 wanted?

2 A. No, sir.

3 Q. Were there ever any occasions where the
4 defendant expressed any reservations about
5 interacting with the confidential informant?

6 A. No.

7 Q. Were there ever any occasions when the
8 defendant may have said things such as, "Please leave
9 me alone. Go away. I don't want to work with you.
10 Please leave"?

11 A. No. All of the phone calls were incoming
12 to the confidential informant.

13 Q. Why is that noteworthy? Why should the
14 jury appreciate that?

15 A. Because Mr. Leal was arranging a
16 transaction. He was the one calling our informant.
17 We were not calling him.

18 Q. In other words, he was initiating that
19 contact?

20 A. That's correct.

21 Q. If the defendant, Mr. Leal, had, in fact,
22 been saying to your confidential informant to leave
23 him alone, what would you have done?

24 A. We would have left him alone.

25 Q. Are there other criminal targets in

1 Albuquerque that you could have focused on?

2 A. Yes, sir.

3 Q. So based on the phone calls that Mr. Leal
4 made for the confidential informant in July of 2016,
5 what happened?

6 A. A narcotics investigation was initiated
7 with Daniel Carmona.

8 Q. And who is Daniel Carmona?

9 A. He is a drug dealer in the city of
10 Albuquerque.

11 Q. Did the defendant, Mr. Leal, ever make
12 reference to the name Daniel Carmona?

13 A. No, I believe they referred to him as
14 Primo.

15 Q. Primo. Do you know whether the
16 confidential informant also knew Daniel Carmona as
17 Primo?

18 A. Correct.

19 Q. Based on -- first of all, let me ask you
20 this. Did the defendant, Mr. Leal, provide Daniel
21 Carmona's phone number to the confidential informant?

22 A. Yes, he did.

23 Q. And based on that information, what did the
24 confidential informant do?

25 A. Placed a phone call to Daniel.

1 Q. Was Daniel Carmona responsive?

2 A. Yes.

3 Q. What did Daniel Carmona do or say?

4 A. He ultimately sold us crystal
5 methamphetamine.

6 Q. Sold who crystal methamphetamine?

7 A. The confidential informant and an ATF
8 undercover agent.

9 Q. And when was this?

10 A. On July 25, 2016, and August 3, 2016.

11 Q. You indicated that the confidential
12 informant was accompanied by an ATF undercover agent?

13 A. Yes, sir.

14 Q. Why did you use an undercover agent to go
15 conduct the drug deal with the confidential
16 informant? In other words, why not just let the
17 confidential informant go off and do the drug deal
18 with Daniel Carmona on his own?

19 A. Our goal with many investigations is to try
20 to insert an ATF undercover agent into the
21 investigation. It's primarily for the safety of the
22 confidential informant.

23 Q. And on that date, July 25, 2016, were the
24 confidential informant and ATF undercover agent
25 successful in buying methamphetamine --

1 A. Yes, they were.

2 Q. -- from Daniel Carmona?

3 A. Yes, sir, they were.

4 Q. Would you happen to have the particulars as
5 far as how much methamphetamine was sold?

6 A. Yes, sir.

7 Q. How much was it?

8 A. Approximately 2 ounces of crystal
9 methamphetamine.

10 Q. Do you know whether the confidential
11 informant or the ATF agent paid Daniel Carmona money
12 for this?

13 A. He did.

14 Q. Do you know how much it was?

15 A. I believe it was \$1,100. \$550 per ounce.

16 Q. And is that a standard price for 2 ounces
17 of methamphetamine here in Albuquerque?

18 A. Fair price.

19 Q. Tell us, you said there were two deals, one
20 in August of 2016; is that correct?

21 A. Yes, sir.

22 Q. Tell the jury what happened on that
23 occasion.

24 A. The transaction occurred on August 3, 2016.
25 Again, the transaction was set for approximately 2

1 ounces of crystal methamphetamine, and the plan was
2 to arrest Daniel Carmona after the transaction was
3 concluded.

4 Q. And what was the setup like? Was it again
5 a confidential informant and an ATF undercover agent
6 buying the drugs from Daniel Carmona?

7 A. Yes, sir. Everything was recorded between
8 the confidential informant and Daniel Carmona.

9 Q. And on August 3, 2016, did Daniel Carmona,
10 in fact, show up to the scene of the drug deal with
11 additional methamphetamine?

12 A. Yes, sir, he did.

13 Q. How much was it?

14 A. Approximately 2 ounces.

15 Q. And how much did you guys pay this time?

16 A. That I don't recall, but -- I don't recall
17 the price on that one. I don't know if he gave us
18 another price since we were a return customer.

19 Q. Actually, I believe you stated you placed
20 him under arrest that day.

21 A. Yes, sir.

22 Q. So you indicated that you placed
23 Mr. Carmona under arrest on August 3, 2016. Why did
24 you not place him under arrest after the first drug
25 deal on July 25, 2016? In other words, why did you

1 wait for another drug deal to occur on August 3,
2 2016?

3 A. August 3, 2016, is when we were wrapping up
4 our investigation, our time in Albuquerque. If we
5 would have arrested Mr. Carmona in July, it would
6 have compromised the confidential informant and our
7 ATF undercover as law enforcement.

8 Q. After this deal on August 3, 2016, did you
9 have an opportunity to meet with the confidential
10 informant?

11 A. Yes, we meet the informants right after the
12 buy at a predetermined location.

13 Q. When you met with him, what did you do with
14 him?

15 A. The informant is again searched.

16 Q. And what was the result of the search?

17 A. Negative for contraband.

18 Q. When you had the opportunity to see the
19 confidential informant, did he appear to you to be
20 under the influence of drugs or alcohol?

21 A. No, sir.

22 Q. Now, Agent Ramos, I'm going to approach you
23 with a couple of drug exhibits that have already been
24 admitted into evidence so you can discuss them. I
25 want to hand them to you and then you tell me what

1 they are.

2 A. Thank you.

3 Q. Agent, do you recognize those drug
4 exhibits?

5 A. Yes, sir, I do.

6 Q. Please tell the jury what they are.

7 A. This is the crystal methamphetamine that
8 was purchased on July 25, 2016, and August 3, 2016,
9 from Daniel Carmona.

10 Q. I'll retrieve those from you, Agent.

11 MR. HURTADO: May the prosecution have a
12 brief moment to confer with his co-counsel?

13 THE COURT: You may.

14 BY MR. HURTADO:

15 Q. I apologize, Agent. I glossed over an
16 important detail. Can you tell us how many ounces --
17 or how many grams are in one ounce?

18 A. Approximately 28 grams.

19 Q. Twenty-eight grams. So if the ATF
20 purchased 2 ounces of methamphetamine, more or less,
21 how many grams would that be?

22 A. Approximately 56 grams.

23 Q. The drug exhibits that I just handed you --
24 were these drug exhibits submitted to a lab for a
25 forensic analysis?

1 A. Yes, the DEA laboratory.

2 Q. Would you happen to know how much the exact
3 amounts were?

4 A. I do not.

5 Q. How about this? Do you happen to know
6 whether they were more than 50 grams?

7 A. They were.

8 MR. HURTADO: Your Honor, I have no further
9 questions for Agent Ramos.

10 THE COURT: Thank you, Mr. Hurtado.

11 Mr. Bowles, do you have cross-examination
12 of Mr. Ramos?

13 MR. BOWLES: Yes, Your Honor.

14 THE COURT: Mr. Bowles.

15 CROSS-EXAMINATION

16 BY MR. BOWLES:

17 Q. Agent Ramos, when you began working with
18 the confidential informant, did that start off in
19 Chicago?

20 A. Yes, sir.

21 Q. And that was in approximately 2012; is that
22 correct?

23 A. That's correct.

24 Q. And the confidential informant worked a
25 number of cases with the ATF over the last seven

1 years; is that correct?

2 A. From 2012 to current, yes, sir.

3 Q. Now, how did the confidential informant
4 come to be working with the ATF in 2012?

5 A. Actually, I was referred to this
6 confidential informant by the Chicago Police
7 Department. An individual that I knew that is an
8 officer with the Chicago Police Department.

9 Q. So had this confidential informant been
10 working with the Chicago PD prior to ATF?

11 A. Yes, sir.

12 Q. And my understanding, he was working with
13 the FBI, as well, prior to that; is that right?

14 A. That's correct.

15 Q. And that dates back to 2005, approximately,
16 timeframe?

17 A. I'm not sure, sir.

18 Q. Okay. And sir, do you have any idea how
19 much this individual has been paid in all the time
20 he's worked for the PD, the FBI, and the ATF?

21 A. No, sir. I don't know those numbers prior
22 to us.

23 Q. So just the ATF side, I think you said he
24 was paid \$125,000, roughly?

25 A. Roughly.

1 Q. And you said that was about \$17,900 per
2 year; is that correct?

3 A. Yes, sir.

4 Q. Do you go back and look and make sure that
5 he reports that on his taxes?

6 A. I do not. But when they sign the receipt
7 for being paid, they initial a line that says it's
8 their responsibility to do that.

9 Q. So is there anybody in the Government that
10 goes back and makes sure that this guy is actually
11 reporting on his taxes? Is there anybody that does
12 that?

13 A. Not that I'm aware.

14 Q. So how is this money paid to him? Is it
15 cash or check? How do you give that to him?

16 A. It's cash. It's cash that we keep within
17 our office.

18 Q. So is this handed to him on a monthly
19 basis, a yearly basis, or how do you give him the
20 cash?

21 A. It's usually handed to the informant after
22 a transaction.

23 Q. So when he does a transaction, does that
24 mean it has to be a successful transaction? Is that
25 when he gets the cash?

1 A. I have paid informants for deals that they
2 attempted to put together that did not go through
3 fruition. They've also been paid if a deal does not
4 go.

5 Q. Do they get paid the same amount?

6 A. Sometimes. Sometimes not.

7 Q. Okay. So on occasion they get paid more, I
8 would assume, if they have a successful deal, for
9 example? They go ahead and they get drugs from a
10 guy, they get paid the full amount?

11 A. Yes, on these four-month initiatives, which
12 this was one of those, they're paid a set amount. So
13 he did not get paid additional money for these
14 transactions. It was a set amount, prearranged.

15 Q. So now, I'm sure you have more than this
16 guy working. There are other confidential
17 informants?

18 A. I have several.

19 Q. And then you're paying them all cash. Now,
20 nobody is watching if they're reporting on their
21 taxes, but are you keeping track of this cash that's
22 being paid to them?

23 A. We keep a running tally of the amount
24 they're paid; correct.

25 Q. Is that sent to the IRS or sent to any tax

1 agency?

2 A. No, sir.

3 Q. So in terms of his finances, did you ever
4 run an investigation midway through or while he's
5 working for you to see if he's got any other source
6 of funds while he's working for you?

7 A. He's had employment while he's worked for
8 me as a confidential informant.

9 Q. Do you know what type of employment?

10 A. Like a forklift driver.

11 Q. Do you ever check to see if -- because
12 confidential informants, in your experience,
13 sometimes they double-deal; sometimes they still do
14 criminal acts. Have you had that in your experience
15 as an agent?

16 A. I've had that in my experience, yes.

17 Q. And that happens; right?

18 A. It does happen.

19 Q. And so what's your mechanism to ensure that
20 this confidential informant wasn't dealing drugs on
21 the side or wasn't using drugs? How do you ensure
22 that?

23 A. We ensure that by -- we search the
24 informants prior to and after every single
25 transaction. We corroborate their information that

1 they give us by running phone numbers, license
2 plates, those sorts of things.

3 Q. Do you drug-test them?

4 A. We do not.

5 Q. So you never drug-tested this informant in
6 seven years?

7 A. Correct.

8 Q. I think you said in your direct examination
9 that you never knew this informant to be using
10 alcohol?

11 A. Not in my -- I've never witnessed it.

12 Q. Were you aware that -- and you signed him
13 up in approximately October 2012; correct?

14 A. Yes, sir.

15 Q. Were you aware that in that year he was
16 arrested for DUI?

17 A. I was.

18 Q. Okay. So you knew that he had at least on
19 one occasion driven while drinking?

20 A. He was arrested for it; correct.

21 Q. Do you know whether he was found guilty?

22 A. I believe it was dismissed.

23 Q. Do you know why it was dismissed? Did the
24 agency help in any of that?

25 A. Not that I recall.

1 Q. Did anybody from the ATF contact the police
2 to get that dismissed, or did they help with that?

3 A. Not that I recall.

4 Q. Okay. Did you follow up to determine if he
5 had any probation or any requirements as a result of
6 that case?

7 A. Not that I recall.

8 Q. Now, as part of your contract with these
9 confidential informants and with the one in this
10 case, one of the things you tell them is: "You're
11 not to commit crimes while you're working for us."
12 Is that fair to say?

13 A. Fair to say.

14 Q. Now, what would happen if the confidential
15 informant, while he's working for you, commits a
16 crime?

17 A. It depends on the crime. But they could be
18 terminated from usage.

19 Q. And is that in the discretion of the
20 agency?

21 A. It is.

22 Q. Now, in the course of this case, were you
23 aware that after you had signed up this confidential
24 informant, he was driving on a suspended license
25 through Illinois?

1 A. I was aware that he was arrested for
2 driving while suspended.

3 Q. Prior to him being arrested, were you told
4 by the confidential informant that he's driving
5 around on a suspended license?

6 A. I was not told, but I assisted -- I
7 actually recall driving the informant to a couple
8 locations in the city of Chicago to get his driver's
9 license reinstated, because he could not have a
10 suspended driver's license and continue working for
11 us.

12 Q. Well, before you knew that, he was doing
13 deals for you and driving around on a suspended
14 license; you just didn't know he had suspended
15 license?

16 A. I did not know.

17 Q. So the confidential informant, you would
18 agree with me, was doing deals for you and had not
19 told you that his license was suspended at least for
20 a time?

21 A. At least for a time.

22 Q. And would you consider that that he
23 withheld information from you?

24 A. I didn't ask, so...

25 Q. That's something that you want to know as a

1 case agent, don't you? The handler? If somebody is
2 committing crimes in the state of Illinois, driving
3 around without a license, don't you want to know
4 that?

5 A. Sure.

6 Q. Okay. And I'm just trying to establish --
7 so this confidential informant didn't report to you
8 that information?

9 A. I don't recall him reporting that
10 information.

11 Q. Because if he had told you, you would have
12 addressed it right away?

13 A. We would have had to have, yes.

14 Q. After you took him around to get him a new
15 license, did he ever say anything to you? Did he
16 ever explain it to you, what happened?

17 A. Not that I recall. It was several years
18 ago.

19 Q. This was in 2015. If his DUI was dismissed
20 in 2012, how did his license get suspended?

21 A. I don't know, sir. I believe he had some
22 outstanding fines, possibly some traffic light
23 tickets that were unpaid.

24 Q. Is that the only DUI in the last seven
25 years that you're aware of for Mr. -- arrests for the

1 confidential informant?

2 A. There was a second incident for DUI.

3 Q. In 2013?

4 A. I believe it was 2013 and possibly 2015.

5 Q. And again, I'm going back to when you said
6 you're not aware of him -- and I know in your
7 presence, because you would have addressed it, he
8 wasn't drinking. But at least we now know there were
9 multiple instances of DUI while he was working as a
10 paid informant for you all.

11 A. At least two occasions.

12 Q. At least two occasions. Do you know what
13 happened in that subsequent DUI?

14 A. I do not, sir.

15 Q. Now, on direct examination you talked about
16 the calls -- and I just want to pin these down -- in
17 July. Isn't it true that the 7/21 call was between a
18 man named Jose Casias and the confidential informant?

19 A. Yes, I believe so.

20 Q. And Jose Casias discussed words to the
21 effect that he sells marijuana, but he talked a
22 little bit more about some other stuff. Do you
23 recall that call?

24 A. I do recall that.

25 Q. And the July 24 call -- that was between

1 Luis -- he was one of the speakers on that call;
2 correct?

3 A. Luis who?

4 Q. Do you know who that is? Luis?

5 A. I know two Luises.

6 Q. Do you know a man named Arreola?

7 A. Yes, sir.

8 Q. And can you tell the jury who that is?

9 A. He was incarcerated with Mr. Leal.

10 Q. And you know from being on this case, being
11 the case agent, you know that Mr. Arreola -- you
12 suspect that the drugs that Carmona sold were Mr.
13 Arreola's?

14 A. It was an associate of Mr. Arreola's.
15 Carmona.

16 Q. I'm sorry, it was an associate of Mr.
17 Arreola and Mr. Carmona who had these drugs?

18 A. Correct.

19 Q. And you know that Mr. Arreola was
20 incarcerated with Mr. Leal.

21 A. That's correct.

22 Q. One of the calls that occurred was a woman
23 named Barraza?

24 A. I believe that's the girlfriend or wife of
25 Mr. Arreola.

1 Q. And so Mr. Arreola's wife was talking to
2 the confidential informant, and she was the one that
3 eventually gave Carmona's name, wasn't she?

4 A. I don't recall that.

5 Q. And Carmona is the one that actually ended
6 up selling the drugs on the two occasions, July 25
7 and August 3?

8 A. That's correct. But Mr. Carmona's phone
9 number was provided to the confidential informant by
10 Mr. Leal.

11 Q. And do you know whether he got that from
12 Mr. Arreola while he was in prison with him?

13 A. I don't know that, sir.

14 Q. Because in reality, Mr. Arreola needed to
15 sell those drugs; right? Or his associate did? They
16 were the ones who wanted to sell it.

17 A. I don't know that they needed to sell it.

18 Q. Well, they were the ones that had the
19 drugs. You've investigated this. You know who had
20 the drugs.

21 A. Mr. Carmona had drugs, because they were
22 incarcerated.

23 Q. Well, not because they were incarcerated;
24 because somebody, Mr. Arreola's associate, was
25 working with Carmona to sell those drugs. That was

1 what was really happening, wasn't it?

2 A. Yes, Mr. Leal and Mr. Arreola contacted the
3 confidential informant and provided the informant
4 with Mr. Carmona's phone number to arrange --

5 Q. Let me simplify my question. These drugs
6 were whose? An associate of Mr. Arreola. Who was
7 that?

8 A. Daniel Carmona.

9 Q. Okay. The call with Barrazas was to
10 accomplish ultimately getting to Carmona, correct,
11 for the confidential informant to eventually get to
12 Carmona?

13 A. There was an association between Barrazas
14 and Carmona.

15 Q. And Jose Casias, after that initial call on
16 July 21 -- he drops out of the picture; correct?

17 A. I believe so. It's my understanding that
18 Jose Casias is a relative of Mr. Leal.

19 Q. So Jose Casias doesn't sell the drugs?

20 A. There was never a narcotics transaction
21 with Mr. Casias.

22 Q. So the only two we're talking about here
23 and the drugs we have are the two transactions with
24 Carmona and the confidential informant where the
25 drugs actually change hands; correct?

1 A. That's correct.

2 Q. Now, you were there. You were present,
3 weren't you?

4 A. I was present for both transactions.

5 Q. And just to clarify for the jury, Mr. Leal
6 wasn't present at either of those transactions?

7 A. He was not.

8 Q. And Mr. Casias wasn't present at those
9 transactions?

10 A. He was not.

11 Q. Now, Mr. Arreola -- who else is he related
12 to in this case? Do you know if he's related to
13 Daniel Carmona?

14 A. I believe their significant others are
15 related to each other.

16 Q. And so girlfriend or wife, or whoever it
17 is, they're related?

18 A. Right.

19 Q. And that's the connect between Arreola and
20 Carmona?

21 A. That's my understanding.

22 Q. Now, between the Casias call, the 7/24 call
23 and there is a Barrazas call -- do you know if there
24 are any other calls I'm missing? There is 7/21,
25 7/24, and 7/25; is that right? And then there is a

1 transaction on 7/25; is that correct?

2 A. I believe there are other calls.

3 Q. Okay. And there is also a transaction on
4 8/3 with the drugs; is that right?

5 A. Yes, sir.

6 Q. Did you pay this confidential informant for
7 this trial? Are you giving him money for this trial?

8 A. I'm not personally, but I believe he is
9 making some sort of subsistence.

10 Q. So the ATF is paying him to be here and
11 testify?

12 A. I believe so. I'm not doing that.

13 Q. Do you know how much he's paid for this
14 trial?

15 A. I do not know, sir.

16 Q. Do they also pay his travel down? Or how
17 does he get down here?

18 A. They pay for his flight.

19 Q. Flight. Then they pay for his hotel?

20 A. Yes, sir.

21 Q. And then they pay him money for testifying?

22 A. Per diem for meals and gas and that sort of
23 stuff.

24 Q. And you don't know how much that is? Does
25 he get paid for the whole week, or do you know?

1 A. I don't. The informant actually drove
2 here. So in this instance, we did not pay for a
3 flight, but we have paid for flights in the past.

4 Q. So when they drive, you pay them mileage,
5 don't you, by the IRS rules?

6 A. A lot of times they get paid for their
7 mileage; they're reimbursed.

8 Q. That's the Government mileage, it's 55
9 cents?

10 A. No, I think it's far less than that. I
11 don't recall. I think it's under 20 cents a mile, I
12 believe.

13 Q. Twenty cents?

14 A. I believe. I'm not for certain.

15 Q. Then they get a check or you give them cash
16 for that?

17 A. I believe that's handled by the United
18 States Attorney's Office, not by ATF.

19 MR. BOWLES: Your Honor, I have nothing
20 further.

21 THE COURT: Thank you, Mr. Bowles.

22 Mr. Hurtado, do you have redirect of Mr.
23 Ramos?

24 MR. HURTADO: Yes, sir.

25 THE COURT: Mr. Hurtado.

REDIRECT EXAMINATION

BY MR. HURTADO:

Q. Sir, I want to direct your attention to the part of Mr. Bowles' cross-examination where he references the DWI that the confidential informant was arrested for. Do you remember that?

A. Slightly.

Q. Slightly. I just want to clarify one thing. When the confidential informant was arrested in connection with that DWI, he was not actually working an operation for the ATF at the time; is that correct?

A. That's correct.

Q. Are you aware that a DWI is a misdemeanor?

A. It is.

Q. Is that something for which you would customarily deactivate or fire a confidential informant for doing?

A. No, sir. That wouldn't be grounds for termination.

Q. Now Mr. Bowles made reference to payment or subsistence, I think you called it, for the confidential informant. Does that subsistence pay in any way -- is it in any way contingent upon him giving certain kinds of testimony? Do you understand

1 what I'm trying to say? If you do not understand,
2 just let me know and I'll rephrase it.

3 A. It's not contingent on any sort of
4 testimony.

5 Q. Is that subsistence pay simply designed to
6 cover his daily expenses?

7 A. Yes.

8 Q. Food?

9 A. Correct.

10 Q. Hotel?

11 A. Correct.

12 Q. You work for the ATF. You are a Government
13 agent; correct?

14 A. Yes, sir.

15 Q. Did you get a hotel to be here today?

16 A. Yes, sir.

17 Q. Are you driving a government vehicle?

18 A. I flew here and rented a car.

19 Q. When you flew here, does the ATF pick up
20 the tab for your flight here?

21 A. Yes, sir, they do.

22 Q. So none of this comes out of your pocket,
23 either?

24 A. No, sir.

25 Q. So is the type of pay that the confidential

1 informant gets to be here the same as what the ATF
2 pays you to be here?

3 A. It's very similar. We're given a per diem.
4 So for meals.

5 Q. A per diem. Is that like subsistence?

6 A. Yes.

7 Q. Agent, at this time, in light of the fact
8 that Mr. Bowles has made reference to the phone calls
9 that were made by Mr. Leal, I think it would be
10 fruitful to play some of those phone calls.

11 MR. HURTADO: With that said, however, Your
12 Honor, may the parties approach the bench?

13 THE COURT: You may.

14 (The following proceedings were held at the
15 bench.)

16 MR. HURTADO: Your Honor, I'd like to play
17 the phone calls that Mr. Leal made from jail. I
18 wanted to advise the Court that the prosecution has
19 prepared transcripts, written transcripts, of the
20 audio recordings, and I was wondering if the Court
21 would be okay with the prosecution distributing the
22 transcripts to the jury while the prosecution plays
23 the audio record phone calls.

24 THE COURT: Any objection, Mr. Bowles?

25 MR. BOWLES: I don't, Your Honor, but I was

1 wondering why these weren't played on the direct
2 examination. I wasn't sure if he was going to play
3 them.

4 THE COURT: If you want to do some redirect
5 for the calls, or recross, I'll let you do that. Is
6 that okay?

7 MR. BOWLES: Yes.

8 THE COURT: So you can distribute them.

9 MR. HURTADO: Yes, sir, thank you.

10 (The following proceedings were held in
11 open court.)

12 THE COURT: All right, Mr. Hurtado.

13 MR. HURTADO: Yes, sir. Your Honor, before
14 playing those phone calls I just wanted to advise the
15 Court as well as defense counsel that the United
16 States has prepared written transcripts of the audio
17 recorded phone calls. At this time, I'll distribute
18 those written transcripts to the members of the jury.

19 THE COURT: You may.

20 MR. HURTADO: Your Honor, would you like a
21 copy?

22 THE COURT: Certainly.

23 MR. HURTADO: Mr. Bowles.

24 MR. BOWLES: Yes, thank you.

25

1 BY MR. HURTADO:

2 Q. Agent, before we get started with these
3 calls, two of these are very brief. There is one
4 that is 13 minutes, but I'd like to play them for
5 you.

6 MR. HURTADO: At this time, could I use
7 the --

8 Q. So Agent, what I'm going to do is play the
9 phone calls from Mr. Leal in July, and then I'm going
10 to have you go over them with me.

11 A. Okay.

12 Q. So here is the first call.

13 A. Yes, sir.

14 Q. It's very short.

15 (Tape played.)

16 Q. So Agent, first of all, I'll readily admit
17 that the transcript is not the best possible
18 transcript. But are you familiar with this phone
19 call?

20 A. Yes, sir.

21 Q. Have you listened to this phone call
22 before?

23 A. Yes, I have.

24 Q. And what date was this phone call made?

25 A. I believe it was July 21, 2016.

1 Q. And who was making this phone call?

2 A. It was an incoming phone call from Mr. Leal
3 to the confidential informant.

4 Q. So Gaspar Leal is listed here in this
5 transcript as one of the speakers; correct?

6 A. Yes, sir.

7 Q. And CHS. That's confidential human source,
8 which is another name for a confidential informant;
9 is that correct?

10 A. That's correct.

11 Q. Now, based on your knowledge of this case,
12 who is Jose? Is Jose the same person that Mr. Bowles
13 talked about during his cross-examination of you,
14 meaning Jose Casias?

15 A. Yes, sir.

16 Q. And what is Mr. Leal, the defendant, trying
17 to do here based on what you know of this
18 investigation?

19 MR. BOWLES: Your Honor, I'm going to
20 object again. The call speaks for itself. And the
21 agent's characterization of it -- the call speaks for
22 itself.

23 THE COURT: Well, let's let the jury hear
24 what the call says, and they can make that
25 determination.

1 MR. HURTADO: Yes, sir.

2 THE COURT: Sustained.

3 BY MR. HURTADO:

4 Q. Agent, let's move on to the second phone
5 call. Okay, that's under tab 2 of the same binder
6 that I just handed you.

7 A. Okay.

8 Q. And before I play that call, I just want to
9 make clear, you've never spoken by phone with
10 Mr. Leal; correct?

11 A. That's correct.

12 Q. But over the course of the investigation,
13 have you come to be familiar with his voice?

14 A. Yes, sir.

15 Q. How certain are you that his voice appeared
16 in that first phone call?

17 A. One hundred percent certain.

18 Q. All right. Now, I'm going to play the
19 second phone call.

20 (Tape played.)

21 Q. You heard that call; is that correct?

22 A. Yes, sir.

23 Q. Is this person, Jose Casias, the same
24 person that was referenced in the first call that we
25 heard?

1 A. Yes.

2 Q. And by the way, Agent, I want to direct
3 your attention to page 9, line 8. As I mentioned
4 before, this is a little embarrassing but the
5 transcript is not 100 percent accurate. The line --
6 excuse me. Line 8 reads as follows. It says,
7 "Kathryn told me." Could it mean that that line is
8 actually supposed to read, "Gaspar told me"?

9 A. Yes.

10 Q. And you heard that call before?

11 A. Yes.

12 Q. And Gaspar -- is that referring to the
13 defendant in this case?

14 A. Gaspar Leal.

15 Q. Can you summarize briefly what's going on
16 in this call?

17 A. Jose Casias is trying to contact somebody
18 via Facebook.

19 MR. BOWLES: Your Honor, I'm going to
20 object. This call speaks for itself.

21 THE COURT: Let's let the call speak for
22 itself. I don't think we need him to give his
23 interpretation of it. The jury can do that.

24 MR. HURTADO: Yes, sir.

25

1 BY MR. HURTADO:

2 Q. Very well. In that case, Agent, I'm going
3 to proceed to the third and final call. This one is
4 approximately 13 minutes and 20 seconds.

5 A. Okay.

6 (Tape played).

7 BY MR. HURTADO:

8 Q. Agent, you just heard that call?

9 A. Yes.

10 Q. There is a reference to a man named Luis.
11 Do you know who that is? Would that be the
12 confidential informant?

13 A. Correct.

14 Q. There are two Luises; is that correct? One
15 is Luis Arreola-Palma, whom Mr. Bowles referenced
16 earlier; and Luis, the confidential informant
17 himself?

18 A. Yes, sir.

19 Q. I won't ask you to summarize. That's up to
20 the jury. But I want to direct your attention to
21 page 20, specifically the first three lines. Earlier
22 you testified -- I think it was on my direct exam --
23 that Gaspar Leal provided Daniel Carmona's phone
24 number to the confidential informant for the purpose
25 of setting up a drug deal. Do you remember that?

1 A. Yes, sir.

2 Q. Okay. Is this phone call, specifically the
3 first three lines on page 20, the basis for your
4 testimony here today?

5 A. That's correct.

6 Q. I am going to go over these calls in a
7 little more detail with another agent, not with you.
8 But for now, this concludes my direct examination.
9 Thank you.

10 THE COURT: Thank you, Mr. Hurtado.

11 Mr. Bowles, do you have further recross?

12 MR. BOWLES: Yes, Your Honor. Thank you.

13 THE COURT: Mr. Bowles.

14 RECROSS-EXAMINATION

15 BY MR. BOWLES:

16 Q. Agent, in call 1, that was the really short
17 call, it looks like Gaspar Leal gives the
18 confidential informant the name of Jose. Is that the
19 import of that call on page 43 at lines 16 through
20 18? "Call Jose"; is that right?

21 A. Yes, sir.

22 Q. And then I want to direct you to the second
23 call, and that's at tab 2. And I'm going to direct
24 you to page 10. And on page 10, lines 14 through 17,
25 do you see where Jose Casias says, "This is what I

1 do, homie, I push weed"? Do you see that, sir?

2 A. Yes.

3 Q. And weed is marijuana; correct?

4 A. Correct.

5 Q. Then later on it says, lines 18 through 20,
6 "I don't push the chronic. I push the swag." What
7 is "chronic"?

8 A. It's my understanding that's a high-grade
9 marijuana.

10 Q. And then what is swag?

11 A. I think it's lower-grade marijuana.

12 Q. Then he's talking about pushing marijuana;
13 correct?

14 A. Yes, sir.

15 Q. And then later on in the call, Jose Casias
16 and the CHS, which are talking -- the CHS is the
17 confidential informant; is that right?

18 A. That's right.

19 Q. Now, when they are talking further on the
20 call, page 11, they mention Jose Casias, says on line
21 18, "You pushed the black. You'd be selling black
22 Jordans." What does that mean?

23 A. That's slang for black tar heroin or
24 heroin.

25 Q. So he's telling the confidential informant

1 that he would be selling that, that the confidential
2 informant sold that, he thought? Is that what
3 that --

4 A. That's correct.

5 Q. To your knowledge, was the confidential
6 informant selling black tar heroin?

7 A. No, sir.

8 Q. Okay. So later on in the call, the CHS,
9 which is the confidential informant, he says on page
10 13, lines 19 through 20, "Usually I get two zippers."
11 Do you see that?

12 A. Yes, sir.

13 Q. And that's the confidential informant, sir,
14 telling Jose Casias that he gets two zippers; right?

15 A. Correct.

16 Q. Now, two zippers. What is two zippers?

17 A. It's another street vernacular term to
18 refer to two ounces.

19 Q. Two ounces of narcotics?

20 A. Correct. And in this instance, they're
21 referring to crystal methamphetamine.

22 Q. And again, that's involving Jose Casias.
23 And the confidential informant brought that up, the
24 two zippers.

25 A. Correct.

1 Q. Okay. And finally, I want to take you to
2 call 3, and that's at tab 3. And again, on page 17
3 we see the name Luis Arreola-Palma introduced. And
4 he does a lot of talking with the CS. Again, we
5 talked about him earlier. Is that the same Luis
6 Arreola-Palma?

7 A. Yes.

8 Q. Okay. He was the one incarcerated with
9 Gaspar Leal; correct?

10 A. That's correct.

11 Q. So on these calls, do you know if they're
12 literally standing by each other in the same cell or
13 same call area?

14 A. Sounds like they're standing next to each
15 other.

16 Q. Now, these calls. Are they on a Securus
17 system?

18 A. Yes.

19 Q. And a Securus system is a jail system,
20 correct, that is recorded?

21 A. Correct.

22 Q. So these recorded calls, you said the
23 confidential informant records them, but the jail
24 also records them?

25 A. That is correct.

1 Q. Inmates are told when they make calls on
2 Securus that those are going to be recorded; correct?

3 A. That's usually part of the preamble that
4 tells them that the calls are recorded.

5 Q. Okay. So those can be recorded and they
6 can later be retrieved and listened to.

7 A. Yes, sir.

8 Q. Now, as you go along through this call 3,
9 you see the name Jose Casias also, and I'm going to
10 direct you, for example, to page 20. So what is
11 going on here? It looks like at least a three-way
12 call.

13 A. Yes.

14 Q. So you've got Gaspar Leal interspersing
15 every once in a while. He's in the jail; right?

16 A. Correct.

17 Q. And Luis Arreola-Palma is in the jail?

18 A. Correct.

19 Q. And then Jose Casias is on a cellphone
20 somewhere; is that right?

21 A. Yes.

22 Q. And then the confidential informant is on
23 his cellphone?

24 A. Correct.

25 Q. And are those two in separate places?

1 A. The informant and Mr. Casias are in
2 separate places.

3 Q. Then I think towards the end of that call,
4 there is yet other references on page 25 to
5 unidentified male. Do you have any idea who that
6 person is? There's a whole string of unidentified
7 male references.

8 A. I believe that is Luis Arreola speaking.

9 Q. Okay. And one more thing on this call.
10 Mr. Leal is talking about -- and he's in jail, he's
11 going to get out in seven months. I know that you
12 had said you witnessed the meeting at his apartment.
13 Was that apartment here in Albuquerque, that initial
14 meeting with the confidential informant?

15 A. I helped cover that meet, yes.

16 Q. That apartment -- do you know what area of
17 town that was in?

18 A. No, I don't recall. I believe it was on
19 Iron Street, I believe.

20 Q. A small apartment or just --

21 A. It was a smaller apartment. It was
22 actually in an apartment complex, a multiunit
23 building.

24 Q. I have nothing further, Your Honor.

25 THE COURT: Thank you, Mr. Bowles.

1 Any redirect, Mr. Hurtado?

2 MR. HURTADO: Briefly, Your Honor.

3 THE COURT: I need to give Ms. Bean a
4 break. So if it is brief, go ahead.

5 REDIRECT EXAMINATION

6 BY MR. HURTADO:

7 Q. Agent Ramos, I want to make reference to
8 some of the language that is used. For example, Mr.
9 Bowles pointed out that Jose Casias makes reference
10 to, quote, "two zippers." Do you remember that?

11 A. Yes, sir.

12 Q. So I think you stated two zippers are 2
13 ounces of methamphetamine?

14 A. Correct.

15 Q. So 1 ounce would be one zipper; is that
16 correct?

17 A. That's correct.

18 Q. Do you know why drug traffickers use coded
19 language? For example, why not just say, "I would
20 like to buy 2 ounces of your finest supply of crystal
21 methamphetamine"?

22 A. Because they are warned that law
23 enforcement might be monitoring the phone call.

24 Q. And just to clarify one other point. This
25 investigation took place in Albuquerque, County of

1 Bernalillo, state of New Mexico; correct?

2 A. Correct.

3 MR. HURTADO: Your Honor, nothing further.

4 THE COURT: Thank you, Mr. Hurtado.

5 Anything else, Mr. Bowles?

6 MR. BOWLES: No, thank you, Your Honor.

7 THE COURT: All right. Mr. Ramos, you may
8 step down.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: All right. We're going to take
11 our first break during the Government's presentation
12 of its evidence, so I'm going to remind you of a few
13 things that are especially important. Until the
14 trial is completed, you're not to discuss this case
15 with anyone, whether it's members of your family,
16 people involved in the trial, or anyone else. And
17 that includes your fellow jurors. If anyone
18 approaches you and tries to discuss the trial with
19 you, please let me know about it immediately.

20 Also, you must not read or listen to any
21 news reports of the trial. Don't get on the internet
22 and do any research for purposes of this case. And
23 finally, remember that you must not talk about
24 anything with any person who is involved in the
25 trial, even if it doesn't have anything to do with

1 the trial.

2 If you need to speak with me, simply give a
3 note to one of the court security officers.

4 Depending on how fast we move this afternoon, I'll
5 try not to repeat these every time we take a break.
6 But do keep them in mind each time we do take a
7 break.

8 All right. We'll be in recess for about 15
9 minutes, and then we'll resume the Government's case.

10 All rise.

11 (The jury left the courtroom.)

12 THE COURT: All right. Anything we need to
13 take up before we take our break? Mr. Hurtado,
14 Mr. Cairns?

15 MR. HURTADO: No, sir, thank you.

16 THE COURT: Mr. Bowles?

17 MR. BOWLES: No, Your Honor.

18 THE COURT: All right. We'll be in recess
19 for about 15 minutes.

20 (The Court stood in recess.)

21 THE COURT: All right. We'll go back on
22 the record. Anything we need to discuss before we
23 bring the jury in? Anything else I can do for you,
24 Mr. Hurtado?

25 MR. HURTADO: No, sir.

1 THE COURT: Mr. Cairns?

2 MR. CAIRNS: No, Your Honor.

3 THE COURT: How about you, Mr. Bowles?

4 MR. BOWLES: No, Your Honor.

5 (The jury entered the courtroom.)

6 THE COURT: All right, Mr. Hurtado, does
7 the Government have its next witness or evidence?

8 MR. HURTADO: Yes, sir, it does. The
9 United States would call Confidential Informant.

10 THE COURT: All right. Confidential
11 Informant, if you'll come up and stand next to the
12 witness box on my right, your left, before you're
13 seated, my courtroom deputy, Ms. Bevel, will swear
14 you in.

15 CONFIDENTIAL INFORMANT,
16 after having been first duly sworn under oath,
17 was questioned, and testified as follows:

18 THE COURT: All right. Mr. Confidential
19 Informant. Mr. Hurtado.

20 MR. HURTADO: Yes, sir.

21 DIRECT EXAMINATION

22 BY MR. HURTADO:

23 Q. Sir, I'm not going to ask you to state your
24 real name for the record. Given the nature of the
25 work you do, we're trying to limit any reference to

1 your real name.

2 When I ask you a question, if you don't
3 understand the question, just feel free to ask me to
4 rephrase that question. Do you understand so far?

5 A. Yes.

6 Q. Throughout my questioning of you, I'm going
7 to refer to you as confidential informant. Do you
8 understand so far?

9 A. Yes.

10 Q. So I want the members of the jury to know a
11 little bit about you. Can you tell the jury where
12 you're from?

13 A. Chicago, Illinois.

14 Q. And what I want you to do is: Look at the
15 jury when you're giving an answer. You're from
16 Chicago, Illinois?

17 A. Yes.

18 Q. Can you tell us how old you are?

19 A. 41.

20 Q. 41. Can you tell the members of the jury
21 what you do for a living?

22 A. I work for ATF.

23 Q. You work for the ATF. What do you do for
24 the ATF?

25 A. I buy narcotics off the streets from

1 individuals and guns and stuff like that.

2 Q. In other words, you work as a confidential
3 informant. Okay. How long have you worked for the
4 ATF?

5 A. Six, seven years, give or take.

6 Q. If I told you it was approximately since
7 2012, would that appear correct to you?

8 A. Yes.

9 Q. In what parts of the country have you
10 worked as a confidential informant for the ATF?

11 A. Chicago, Dallas, South Carolina, Milwaukee,
12 St. Louis, Baltimore, New Mexico, El Paso, Denver.
13 That's about it.

14 Q. About it. Sounds like you travel a lot in
15 connection with your work with the ATF?

16 A. Yes.

17 Q. Can you tell the members of the jury why
18 you work as a confidential informant? For example,
19 why not go work at a fast food restaurant or doing
20 construction? What is it about being a confidential
21 informant?

22 A. I'm good at what I do.

23 Q. Try to speak into the microphone.

24 Do you get paid money in exchange for your
25 work as a confidential informant?

1 A. Yes.

2 Q. What is your payment as a confidential
3 informant contingent on? In other words, what do you
4 have to do to make money with the ATF?

5 A. Put deals on the table.

6 Q. Put deals on the table. And when you say
7 "deals," do you mean like drug deals?

8 A. Yes.

9 Q. And how do you go about making arrangements
10 for drug deals? In other words, how do you find drug
11 deals? What do you do?

12 A. I look for individuals on the streets that
13 might fit the criteria as a bad guy.

14 Q. I'm sorry, could you repeat the last part?

15 A. Fit the criteria as a bad guy.

16 Q. They fit the criteria. Is that what you
17 said?

18 A. Yes.

19 Q. And when you say you go looking for people
20 who fit the criteria, do you go on foot? Do you go
21 online? Do you drive around in a car? How do you go
22 about developing these drug deals?

23 A. I drive around in a car.

24 Q. Drive around in a car?

25 A. Yes.

1 Q. Is the ATF aware of what you do?

2 A. Yes.

3 Q. Are you required to report to the ATF when
4 you go out and look for people who, quote, "fit the
5 criteria" that you just talked about?

6 A. Yes.

7 Q. I want to direct your attention slightly to
8 the summer of 2016. Do you remember which agents in
9 particular you would report to in 2016?

10 A. Mike Ramos.

11 Q. And who is Mike Ramos?

12 A. ATF agent.

13 Q. He's an ATF agent?

14 A. Yes.

15 Q. Is he in this courtroom right now?

16 A. Yes.

17 Q. Why did you report to ATF Agent Ramos as
18 opposed to another agent?

19 A. Because I'm assigned to him.

20 Q. You're assigned to him. So as a
21 confidential informant, you're required to report to
22 just one agent?

23 A. Yes.

24 Q. How long have you been working with Agent
25 Ramos?

1 A. Since 2012.

2 Q. 2012. So basically since you started with
3 the ATF?

4 A. Yes.

5 Q. Does Agent Ramos pay you? Is he the agent
6 responsible for paying you for your drug deals?

7 A. Yes.

8 Q. Why should this jury believe anything you
9 have to say in connection to the case that we're
10 about to discuss?

11 A. Because everything I do is recorded on
12 audio and video.

13 Q. Does Agent Ramos also watch over you?

14 A. Yes.

15 Q. Do you remember the investigation that took
16 place back in 2016 and in the summer here in
17 Albuquerque, county of Bernalillo, and state of New
18 Mexico?

19 A. Yes.

20 Q. During that timeframe, do you remember
21 having met in the summer of 2016 a man named Gaspar
22 Leal?

23 A. Yes.

24 Q. What I'd like to have you do right now,
25 Confidential Informant, is stand up and tell me this:

1 Is Gaspar Leal sitting in this courtroom right now?

2 A. Yes.

3 Q. Could you please identify him for the
4 record?

5 A. To my left with a white shirt.

6 Q. Wearing the white shirt?

7 A. Yes.

8 Q. Is he wearing anything else?

9 A. And a tie.

10 MR. HURTADO: Your Honor, may the record
11 reflect that the confidential informant has
12 identified the defendant, Mr. Leal, for the record?

13 Q. You may sit down, sir.

14 THE COURT: The record will so reflect.

15 Q. Can you tell the members of the jury very
16 briefly how you came to have contact with the
17 defendant, Mr. Leal?

18 A. His number was passed to me by an ATF agent
19 that he was giving haircuts and he was passing
20 flyers. So he told me to call his number, and I
21 reached out to him.

22 Q. So when you say he gave you --

23 A. ATF agent.

24 Q. Was it Agent Ramos?

25 A. Yes.

1 Q. I think it might help if you address Agent
2 Ramos by name. That way, when you say words like
3 "he" or "she," we'll know who you're talking about.
4 Does that make sense?

5 A. Yes.

6 Q. So let me flesh out a little bit more
7 information. So are you saying that Agent Ramos
8 obtained for you Mr. Leal's phone number?

9 A. Yes.

10 Q. And did he tell you anything about
11 Mr. Leal? For example, did he just say, "Hey, call
12 this phone number"?

13 A. No, he told me to call him and see about
14 haircuts --

15 MR. BOWLES: Objection.

16 THE COURT: Hold on.

17 MR. HURTADO: Stand by for a second.

18 THE COURT: Are you trying to elicit what
19 was said to him?

20 MR. HURTADO: Although the United States
21 would say it's not being offered for the truth of the
22 matter asserted, I'm trying to elicit testimony that
23 would go to the state of mind, for example, why he
24 called Mr. Leal. It's not being offered for the
25 truth.

1 THE COURT: Well, I can give a limiting
2 instruction or -- is that sufficient?

3 MR. BOWLES: Well, I would ask state of
4 mind. He called because he was given a card and told
5 to call. I don't know why we need further
6 explanation.

7 THE COURT: I'm not sure we do, either.

8 MR. HURTADO: I agree. That's all I was
9 looking for.

10 THE COURT: Why don't you lead him, get the
11 information out, and stop there.

12 BY MR. HURTADO:

13 Q. So now I want to move on, and I want you to
14 make sure you listen carefully to my questions. When
15 you called the defendant, were you actually able to
16 speak with him?

17 A. Yes.

18 Q. Did you actually make an appointment for a
19 haircut?

20 A. Yes.

21 Q. And when was this; do you remember?

22 A. May '16. May, 2016.

23 Q. Did you ever have occasion to go to the
24 defendant's apartment?

25 A. Yes.

1 Q. Why did you go to his apartment?

2 A. To get a haircut.

3 Q. Was that also in May of 2016?

4 A. Yes.

5 Q. Did your -- let me withdraw that. Did you
6 continue speaking with the defendant in July of 2016?

7 A. Yes.

8 Q. In July of 2016, did you discuss drugs with
9 the defendant, Mr. Leal?

10 A. Yes.

11 Q. In July of 2016 did Mr. Leal call you?

12 A. Yes.

13 Q. From where did he call you?

14 A. From jail.

15 Q. From jail. When he called you from jail,
16 where were you?

17 A. I was out in New Mexico.

18 Q. Out in New Mexico. Roaming the streets?

19 A. Yes.

20 Q. Let me ask you this. Did you answer the
21 phone when he called?

22 A. Yes.

23 Q. Did you know it was him?

24 A. Yes.

25 Q. How do you know it was him?

1 A. He said his name at the recording from
2 every call.

3 Q. When you spoke with Mr. Leal, were you able
4 to recognize his voice?

5 A. Yes.

6 Q. How can you be so sure that the voice that
7 you heard on those phone calls was that of Mr. Leal
8 as opposed to somebody else?

9 A. He has a distinguished voice.

10 Q. A distinguished voice?

11 A. Yes.

12 Q. It was familiar to you?

13 A. Yes.

14 Q. When you spoke to Mr. Leal, what did you
15 and he discuss?

16 A. Narcotics.

17 MR. BOWLES: Your Honor, I'm going to
18 object again. The calls speak for themselves. We're
19 talking about the calls that have been played in
20 court.

21 MR. HURTADO: Your Honor, this is his
22 direct testimony about his involvement with the
23 defendant. Any statements that the defendant has
24 made are an admission by a party opponent and
25 therefore admissible.

1 THE COURT: Well, I don't think it's a
2 hearsay objection. But we've heard the statement so
3 he's not going to be as good as a recording. So what
4 are we trying to do?

5 MR. HURTADO: Your Honor, I'm just trying
6 to flesh out --

7 THE COURT: I'm a little bit concerned that
8 we're going to deviate from the recordings here, and
9 we've got that in evidence.

10 MR. HURTADO: With that said, I think I can
11 accommodate the Court and Mr. Bowles' concerns by
12 playing the recordings.

13 BY MR. HURTADO:

14 Q. So Confidential Informant, what I'm going
15 to do at this time is, I'm going to play the phone
16 calls that you had with the defendant, Mr. Leal. Do
17 you understand so far?

18 A. Yes.

19 Q. What I'm going to do is, I'm going to play
20 certain segments of those phone calls, and I'm going
21 to pause the recordings periodically and have you
22 explain what's going on in those recordings. Does
23 that make sense?

24 A. Yes.

25 Q. So I'm going to play the first call.

1 (Tape played.)

2 Q. Now, Confidential Informant, that call was
3 so short, I just played that one straight through
4 instead of pausing it periodically like I said I was
5 going to. Let me ask you about this phone call that
6 you had. First of all, whose voice appears on that?

7 A. Casper.

8 Q. Gaspar?

9 A. Yes.

10 Q. Just to clarify one thing, are you calling
11 him Casper or Gaspar with a G?

12 A. With a K. I mean, I thought it was Casper,
13 not Gaspar.

14 Q. So you thought his name was Casper as
15 opposed to Gaspar?

16 A. Yes.

17 Q. Now, in that phone call, and as you may
18 recall, Gaspar makes reference to a man named Jose.
19 Did you come to learn who Jose was?

20 A. At the moment, no.

21 Q. At the moment, no? Did you even know what
22 was going on at this point?

23 A. The call was so fast. He was just trying
24 to -- he was reaching out to me for --

25 MR. BOWLES: Your Honor, I object to

1 speculation again. He said he didn't know.

2 THE COURT: Well, sustained.

3 BY MR. HURTADO:

4 Q. So let's move on. That was the first call.
5 Now I'm going to move on to the second call. This
6 one is a little bit longer. It's about four minutes
7 and 57 seconds. This one I will stop periodically.

8 Just one thing Mr. Bowles brought up. If
9 you don't know the answer to a question, just say, "I
10 don't know."

11 (Tape played.)

12 Q. Now, I've already paused it. That sounds
13 like your voice; is that correct?

14 A. Yes.

15 Q. And do you know who you're calling at this
16 point, or not quite yet?

17 A. Yes.

18 Q. You do? Who are you speaking with?

19 A. Jose.

20 Q. Is it the same Jose from the first call?

21 A. Yes.

22 Q. How were you able to make contact with
23 Jose?

24 A. By the number that Gaspar gave me.

25 Q. By this point, when you're making this

1 phone call to Jose, do you know why you're making
2 that call?

3 A. Yes.

4 Q. Why?

5 A. For drugs.

6 Q. For drugs?

7 A. Yes.

8 Q. And can you elaborate just a little bit.

9 When you say it's for drugs, does that mean that you
10 want to buy drugs from Jose, or sell them to Jose?

11 A. Buy.

12 Q. Buy?

13 A. Yes.

14 Q. How can you be so sure?

15 A. Because he was giving me the number to
16 reach out to him.

17 Q. When you say "he," do you mean Mr. Leal,
18 the defendant?

19 A. Yes, yes.

20 Q. And speaking of Mr. Leal, did you ever use
21 any type of threats or force to get Mr. Leal to call
22 you?

23 A. No.

24 Q. Who initiated the phone calls between
25 yourself and Mr. Leal?

1 A. What?

2 Q. Who was the person who made the phone call
3 first? Was it Mr. Leal making the phone call to you,
4 or was it you making the phone call to Mr. Leal?

5 A. Him to me.

6 Q. Was it usually that way, or always, or
7 sometimes?

8 A. Always.

9 Q. Always. And let me ask you, when you spoke
10 with him, did he ever appear to be confused or not
11 know what was going on?

12 A. No.

13 Q. If the defendant, Mr. Leal, ever said to
14 you to leave him alone, to go away, or that he didn't
15 deal drugs, what would you have done in that
16 instance?

17 A. I'd have walked away.

18 Q. And if you would have walked away, would
19 you have tried to pursue other suspects?

20 A. Yes.

21 Q. Did Agent Ramos, your handler, know that
22 Gaspar Leal, the defendant, was trying to call you?

23 A. Yes.

24 Q. Did he authorize you to continue having
25 contact with Mr. Leal?

1 A. Yes.

2 Q. So I'm going to continue with this call.

3 (Tape played.)

4 Q. So I've already paused it. Mr. Casias, or
5 Jose, as you know him, he's talking about 100 bucks,
6 or money. Do you know what he's talking about at
7 this point?

8 A. Some food stamps.

9 Q. Food stamps?

10 A. Yes.

11 Q. And just to clarify one point, you have
12 never met this person, Jose, before this time; is
13 that correct?

14 A. No.

15 Q. And you also never knew Mr. Leal before
16 this investigation; correct?

17 A. No.

18 Q. You had no personal connection to Mr. Leal
19 at all?

20 A. No.

21 Q. Is that correct?

22 A. Yes.

23 (Tape played.)

24 Q. Were you able to listen to that segment of
25 the call?

1 A. Yes.

2 Q. It sounds like this is your first phone
3 conversation with Jose. Is that accurate?

4 A. Yes.

5 Q. And can you tell me what's going on here?
6 Are you guys trying to find out what's going on and
7 who each other is or --

8 A. Yes.

9 (Tape played.)

10 Q. When Jose says that he pushes weed, what
11 does that refer to?

12 A. Marijuana.

13 Q. Were you looking for marijuana?

14 A. No.

15 Q. What were you looking for?

16 A. Crystal meth or heroin.

17 Q. Why is Jose talking about marijuana when
18 what you're looking for is crystal methamphetamines?

19 A. I don't know.

20 (Tape played.)

21 Q. All right. So I paused it again. Jose
22 makes reference to a girl, a woman named Crystal.
23 Did you hear that?

24 A. Yes.

25 Q. And it sounded like you didn't know who

1 Crystal was, and you asked, "Who is Crystal?" So
2 what's going on here?

3 A. It didn't click at me at the moment.

4 Q. When you say it didn't click on you, do you
5 mean you didn't understand what was going on?

6 A. Yes.

7 Q. But what did you understand that to mean?

8 A. Crystal meth.

9 Q. Crystal meth?

10 A. Yes.

11 Q. So is Jose trying to use coded language to
12 communicate with you?

13 A. Yes.

14 Q. In your experience as a confidential
15 informant, is it common for drug dealers to use coded
16 language during phone calls?

17 A. Yes.

18 Q. Why?

19 A. Because calls might be tapped or be
20 listened to. You just never know.

21 Q. So you want to avoid the police listening
22 in?

23 A. Yes.

24 Q. If you were to call up a person who you
25 believe was a drug dealer and you said something

1 like, "Hello, I would like to order your finest
2 supply of crystal methamphetamine," what do you think
3 would happen in that instance?

4 A. They'd hang up on me.

5 Q. They'd hang up on you?

6 A. Yeah.

7 Q. Is that something you've ever done
8 throughout your time as a confidential informant?

9 A. Yes.

10 Q. And the person has hung up on you?

11 A. Yes.

12 Q. Let's continue with the call.

13 (Tape played.)

14 Q. All right. So I paused it once again.
15 Jose, this time, is making reference to black
16 Jordans. Selling black Jordans. Do you know what
17 that means?

18 A. Yes, heroin.

19 Q. Heroin. Now, Jose keeps making reference
20 to "he," so for example, he says, "He told me
21 something about that you pushed black, that you'd be
22 selling black Jordans."

23 What makes Jose think that you are selling
24 heroin?

25 A. Because I'm buying narcotics off the

1 streets, they think I'm a seller.

2 Q. And when Jose says, "He told me something
3 about that you pushed the black," who is "he"?

4 MR. BOWLES: Object to speculation. Lack
5 of foundation.

6 MR. HURTADO: He should be allowed to
7 answer if he knows, Your Honor.

8 THE COURT: Well, hold on a second. I'm
9 going to sustain that one.

10 (Tape played.)

11 BY MR. HURTADO:

12 Q. Now, on that call, Confidential Informant,
13 you say, "Could you hook me up with it or something?"
14 Do you recall hearing that?

15 A. Yes.

16 Q. Do you remember what it was you were
17 talking about?

18 A. Yes.

19 Q. And what is that?

20 A. Weapons.

21 Q. Let's move on to the remainder of the call.

22 (Tape played.)

23 Q. All right. So I paused it again and it
24 sounds like you have just requested what are called
25 two zippers. Did you hear that part?

1 A. Yes.

2 Q. Can you tell us what a zipper is?

3 A. An ounce.

4 Q. So would two zippers be 2 ounces?

5 A. Yes.

6 Q. In your experience as a confidential
7 informant, is the word "zipper" a common word for
8 methamphetamine, 1 ounce?

9 A. Or others.

10 Q. Or what -- you were going to say something
11 else.

12 A. Heroin, cocaine.

13 Q. So a zipper is just an ounce, and it could
14 be an ounce for any different type of drug?

15 A. Yes.

16 Q. So it could be an ounce of heroin?

17 A. Yes.

18 Q. An ounce of meth?

19 A. Yes.

20 Q. Ounce of cocaine?

21 A. Yes.

22 (Tape played.)

23 Q. Now, on that instance, Jose makes reference
24 to trying to get ahold of a girl on Facebook. Do you
25 know what's going on there?

1 A. He's trying to direct me to an individual
2 that might help me out.

3 Q. In other words, by "help you out," you mean
4 sell you drugs?

5 A. Yes.

6 (Tape played.)

7 Q. Now, Confidential Informant, the call ends
8 there. What ended up happening with Jose? In other
9 words, did you ever end up buying any drugs from
10 Jose?

11 A. No.

12 Q. And why did that not materialize? Why did
13 that not come through?

14 A. They never got ahold of people, I guess.

15 Q. Did Mr. Leal end up calling you again?

16 A. Yes.

17 Q. And why did he call you again?

18 MR. BOWLES: Objection, speculation.

19 THE COURT: Sustained.

20 BY MR. HURTADO:

21 Q. Was there another phone call with Mr. Leal?

22 A. Yes.

23 Q. Did you speak with Mr. Leal?

24 A. Yes.

25 Q. Was he calling you?

1 A. Yes.

2 Q. I'm going to play the third call. This one
3 is dated July 24. This one is a little bit longer,
4 at 13 minutes, 20 seconds.

5 (Tape played.)

6 Q. So I paused it already. Can you identify
7 the voices for the jury that appear in that call so
8 far?

9 A. Yes.

10 Q. Please tell us who they are.

11 A. Gaspar.

12 Q. Anybody else? Does Jose appear to be on
13 that phone?

14 A. Yes, later.

15 Q. Gaspar mentions a name. He says, "Hey,
16 Luis." Is that you?

17 A. Yes.

18 Q. Is that your real name?

19 A. Yes.

20 (Tape played.)

21 Q. So in that segment, defendant Leal is
22 making reference to his primo?

23 A. Yes.

24 Q. Do you know who that is?

25 A. Cousin.

1 Q. Who is his cousin? Do you know a name? Do
2 you know who that is?

3 A. (Witness shakes head.)

4 Q. That's fine. How about Toque? There is a
5 reference to somebody named Toque. Do you know who
6 that individual is?

7 A. An individual that was incarcerated with
8 him.

9 (Tape played.)

10 Q. I'm going to pause the call there because
11 there is a big segment in Spanish, so I'm going to
12 fast-forward through that.

13 (Tape played.)

14 Q. Now, I paused it again. It sounds like
15 Toque, this guy you know as -- or Luis, this person
16 you know as Toque, says something about the one
17 that's for, for, for Gaspar. Do you remember hearing
18 that?

19 A. Yes.

20 Q. Do you know what that is in reference to?

21 A. No.

22 Q. All right.

23 (Tape played.)

24 Q. I'll pause it right there. The defendant
25 gives you a phone number. Did you hear that part?

1 A. Yes.

2 Q. Did you ever come to learn whose phone
3 number that was?

4 A. Yes.

5 Q. Whose phone number was that?

6 A. Daniel. I know him as Primo.

7 Q. You know him as Primo?

8 A. Yes.

9 Q. Did you ever come to learn Primo's real
10 name?

11 A. Yes.

12 Q. And what is his real name?

13 A. Daniel.

14 Q. Does he have a last name?

15 A. I don't know.

16 Q. That's fine. And why is Mr. Leal giving
17 you that phone number?

18 MR. BOWLES: Object to speculation, Your
19 Honor.

20 THE COURT: Well, sustained.

21 BY MR. HURTADO:

22 Q. What did you do with that phone number,
23 Confidential Informant?

24 A. I called it.

25 Q. You called it?

1 A. Yes.

2 Q. And why did you call it?

3 A. To buy drugs off him.

4 Q. To buy drugs?

5 I'm going to continue with the call.

6 (Tape played.)

7 Q. So answer this only if you know. Jose
8 makes reference to trying to make a four-way call.
9 Do you know who is going to be involved in that
10 four-way call?

11 A. Daniel.

12 Q. Daniel?

13 A. Yes.

14 Q. Anybody else? Is Gaspar a part of that
15 call?

16 A. Yes.

17 Q. Is Luis Arreola-Palma a part of that call?

18 A. Yes.

19 Q. And are you a part of that call?

20 A. Yes.

21 (Tape played.)

22 Q. All right. In that segment, Mr. Leal, the
23 defendant, says, "Just keep on trying, then."

24 Only if you know the answer, do you know
25 what Mr. Leal is trying to get you to do?

1 MR. BOWLES: Again, Your Honor, I'm going
2 to object.

3 THE COURT: Well, I think he can explain
4 what he did. But I guess he can say what his
5 understanding was that he understood Mr. Leal to want
6 him to do. So if you phrase it that way, his
7 understanding, I'll allow him to testify.

8 MR. HURTADO: Yes, sir.

9 BY MR. HURTADO:

10 Q. Confidential Informant, what was your
11 understanding of what Mr. Leal, the defendant, wanted
12 you to do?

13 A. To reach out to Daniel and buy narcotics
14 off him.

15 Q. The rest of the call I won't play, but I
16 want to touch base on a few more things before I
17 conclude my direct exam of you.

18 First of all, do you know who I am?

19 A. Yes.

20 Q. Have you ever met me before?

21 A. Yes.

22 Q. What is my name?

23 A. Sammy.

24 Q. Where have you and I met before?

25 A. At your office, state attorney.

1 Q. And why did we meet there?

2 A. To prep me.

3 Q. To prep you?

4 A. Yes.

5 Q. To prep you for this trial?

6 A. Yes.

7 Q. Okay. Were you paid any money by the ATF
8 to be here today for this trial?

9 A. Today as in --

10 Q. So --

11 A. For my expenses being here.

12 Q. Yes, for the purposes of being here.

13 A. Yes.

14 Q. Can you tell the members of the jury how
15 much that was, to your knowledge?

16 A. 600.

17 Q. \$600?

18 A. Yes.

19 Q. And is it common practice for the ATF to
20 pay you for work-related expenses like travel?

21 A. Yes.

22 Q. The \$600 that you received -- what do you
23 spend that on, when you're making work-related travel
24 arrangements like this?

25 A. Bills, expenses, just my -- money for my

1 kids.

2 Q. Do you get set up with a hotel by the ATF?

3 A. Yes.

4 Q. Do you get reimbursed for mileage, like on
5 your car? You said you drove --

6 A. Sometimes.

7 Q. Sometimes?

8 A. Yes.

9 Q. Food?

10 A. It comes out of my pocket.

11 Q. Food comes out of your pocket. Are you
12 directed by the ATF to testify a certain way because
13 they're paying you?

14 A. No.

15 Q. Okay. Have I told you to testify a certain
16 way?

17 A. No.

18 Q. You indicated before that you've been
19 working with the ATF since, I think, 2012; is that
20 correct?

21 A. Yes.

22 Q. You've been paid money in exchange for your
23 services.

24 A. Yes.

25 Q. Do you own any big mansions?

1 A. No.

2 Q. Do you own expensive cars?

3 A. No.

4 Q. Do you wear designer clothes?

5 A. No.

6 Q. Fancy jewelry?

7 A. No.

8 Q. So what do you spend all this money that
9 you earn from the ATF?

10 A. Expenses, going out eating, bills, sending
11 money home.

12 Q. Do you remember back in 2015 you were
13 charged with driving on a suspended or a revoked
14 license?

15 A. Yes.

16 Q. Did you ever get that fixed?

17 A. Yes.

18 Q. Did the ATF help you get that fixed?

19 A. Yes.

20 Q. When your license was suspended or revoked,
21 did Agent Ramos here drive you around, or how did you
22 get around that?

23 A. Yes, he drove me around.

24 Q. All right, Mr. Confidential Informant --
25 actually, I do have more questions for you.

1 So we just listened to this one longer call
2 where the defendant, Mr. Leal, gave you a phone
3 number to this guy you learned was named Daniel. Do
4 you remember that?

5 A. Yes.

6 Q. And I think you testified that it was your
7 understanding that Mr. Leal was giving you that phone
8 number --

9 MR. BOWLES: Your Honor, I'm going to
10 object to leading.

11 THE COURT: Don't lead him.

12 MR. HURTADO: Yes, sir, Your Honor.

13 BY MR. HURTADO:

14 Q. What did you do with the phone number that
15 Mr. Leal gave you for Daniel or the man you knew as
16 Primo?

17 A. I called it a couple of times.

18 Q. You called it a couple of times. Did you
19 ever get a response from Daniel, or Primo?

20 A. Not at the moment; after I shot him a text.

21 Q. And he responded to you then?

22 A. Yes.

23 Q. And based on that response, what did you
24 and Daniel, or Primo, as you know him, discuss?

25 A. Crystal meth.

1 Q. Crystal meth. How much did Daniel agree to
2 sell you?

3 A. Two ounces.

4 Q. Is that what you negotiated for?

5 A. Yes.

6 Q. Do you remember whether you and Daniel had
7 come to an agreement about how much the
8 methamphetamine -- you would have to pay?

9 A. The following day.

10 Q. The following day. The following day,
11 where did you meet Daniel?

12 A. At a Walmart.

13 Q. Was that here in the city of Albuquerque,
14 county of Bernalillo, in the state of New Mexico?

15 A. Yes.

16 Q. Who were you accompanied with?

17 A. With ATF Agent Carlos Valles.

18 Q. Had you ever worked with Agent Valles
19 before?

20 A. Yes.

21 Q. Why was Agent Valles with you on this day?

22 A. He was doing undercover.

23 Q. And just to clarify, what month and what
24 year are we talking about?

25 A. July 2016.

1 Q. July 2016. And I'm sorry, why was Agent
2 Valles with you, if you know?

3 A. He was doing the deal with me, as in he was
4 playing the role as an undercover agent, but also a
5 street hustler.

6 Q. I think you said that you and the
7 undercover agent went to Walmart?

8 A. Yes.

9 Q. How did you and the agent get there?

10 A. In his vehicle.

11 Q. Did Daniel, or Primo, end up showing up, as
12 well?

13 A. Yes.

14 Q. How did he get there?

15 A. In his vehicle.

16 Q. What happened once Primo, or Daniel, got
17 there?

18 A. I jumped out the vehicle, and sat in the
19 front passenger side, and a minute later Carlos
20 jumped out and sat in the backseat of the vehicle.

21 Q. So as I understand it, it's Daniel,
22 yourself, and Agent Valles in the car; is that
23 correct?

24 A. Yes.

25 Q. What happened inside the car?

1 A. I introduced them to one another so they
2 could see each other, and I stepped out, and they
3 started talking among each other.

4 Q. Did you see Daniel give anything to the
5 agent?

6 A. Yes, 2 ounces of crystal meth.

7 Q. Did you see the agent give anything to
8 Daniel?

9 A. Yes, money.

10 Q. After the money and the drugs were
11 exchanged, where did you guys go?

12 A. We jumped out and went back to our vehicle
13 and took off.

14 Q. And did Daniel leave in his own separate
15 direction?

16 A. Yes.

17 Q. Did you have contact with Daniel again?

18 A. Yes.

19 Q. When was this?

20 A. August of 2016.

21 Q. August of 2016. And what happened on this
22 occasion?

23 A. Another order for 2 ounces of crystal meth.

24 Q. From Daniel?

25 A. Yes.

1 Q. Did you place that order?

2 A. Yes.

3 Q. Do you know how much it was for?

4 A. Two ounces.

5 Q. I'm sorry, price.

6 A. Give or take 450, 500.

7 Q. Dollars?

8 A. Yes.

9 Q. Per ounce?

10 A. No, per ounce was \$250, \$200.

11 Q. And tell us where this deal took place.

12 A. At a car wash.

13 Q. Car wash. Was that, again, in the city of
14 Albuquerque, county of Bernalillo, state of New
15 Mexico?

16 A. Yes.

17 Q. And describe what happened.

18 A. We drove up. We waited for him. We parked
19 in one of the stools where you wash the car. He
20 showed up, parked right next to us. We jumped out,
21 me and Carlos, and we tried to lure him towards the
22 vehicle so we could look at the stash com --
23 compartment.

24 Q. What happened once Daniel -- once you saw
25 Daniel there at the car wash?

1 A. He jumped out of his vehicle. He came
2 around at that moment. I knew my position to get in
3 the back of the car while ATF arrested him.

4 Q. So you knew ATF in advance was going to
5 arrest him?

6 A. Yes.

7 Q. Did you know whether Daniel brought
8 anything to the scene with him?

9 A. Yes.

10 Q. What did he bring?

11 A. Crystal meth.

12 Q. Have you testified here today to the best
13 of your ability and knowledge?

14 A. Yes.

15 MR. HURTADO: Your Honor, I have no further
16 questions. Thank you.

17 THE COURT: Thank you, Mr. Hurtado.

18 Mr. Bowles, do you have cross-examination
19 of the confidential informant?

20 MR. BOWLES: Yes, Your Honor.

21 THE COURT: Mr. Bowles.

22 CROSS-EXAMINATION

23 BY MR. BOWLES:

24 Q. Confidential Informant, you started working
25 for the ATF in approximately October of 2012; is that

1 right?

2 A. Yes.

3 Q. Before that, you had worked for the Chicago
4 Police Department and the FBI; is that right?

5 A. Yes.

6 Q. And both the Chicago Police Department and
7 the FBI had paid you for your work?

8 A. Yes.

9 Q. Do you have any idea how much money you got
10 from the Chicago PD and FBI over the years?

11 A. About \$25,000.

12 Q. And the ATF has paid you approximately
13 \$125,000; is that correct?

14 A. Yes.

15 Q. You stated on direct examination you have
16 to put deals on the table to make money; is that
17 right?

18 A. Yes.

19 Q. And so when you put a deal on the table,
20 the ATF pays you; is that right?

21 A. Correct.

22 Q. In this case, you're getting \$600 to come
23 into this courtroom and testify, you were paid \$600
24 for this case; is that right?

25 A. Yes.

1 Q. And have you been paid money to drive out
2 here in your vehicle?

3 A. No.

4 Q. Oh, don't you get mileage reimbursed,
5 Confidential Informant?

6 A. Yes.

7 Q. That's through the U.S. Attorney's Office;
8 right?

9 A. Yes.

10 Q. You also get your hotel paid for; correct?

11 A. Yes.

12 Q. How many days are you out here? One or
13 two?

14 A. A week.

15 Q. A week. Do you spend that whole week
16 preparing with the Government?

17 A. Not the whole week. A couple of days.

18 Q. A couple of days. So you get in with them
19 for a couple of days and prepare for your testimony.

20 A. Yes.

21 Q. And you know that this case, the deal that
22 you're working on, is Gaspar Leal; right?

23 A. Yes.

24 Q. And he's the only one on trial here?

25 A. Yes.

1 Q. And you've been paid \$600. Now, over the
2 years, you were paid \$125,000. And is that all in
3 cash?

4 A. Yes.

5 Q. And that was all to put deals on the table
6 for the ATF; correct?

7 A. Yes.

8 Q. Now, at any given time, under your
9 contract, do you get paid, for example, \$10,000 and
10 another time you get \$5,000? And my question is: Do
11 the numbers vary? The amounts you get paid vary?

12 A. What do you mean?

13 Q. So for this deal, let's say you get paid
14 \$2,000 in cash. And for this deal in three months,
15 they might give you \$5,000 in cash.

16 A. Not if I got in one -- the right amount
17 every week, like a regular check.

18 Q. Every week they give you cash?

19 A. Yes.

20 Q. How, at the end of the year, do you report
21 all that income?

22 A. Taxes. I fill out a form.

23 Q. Have you put all of this on your tax
24 returns over the years?

25 A. I end up giving back.

1 Q. You gave back what?

2 A. I end up paying. I end up owing, in other
3 words.

4 Q. How much money do you owe?

5 A. At the moment, off the top of my head, I
6 can't --

7 Q. Do you have any other jobs the last seven
8 years besides working for the ATF?

9 A. No.

10 Q. So the last seven years, your entire income
11 has been the ATF?

12 A. Yes.

13 Q. Have you sold any drugs on the side?

14 A. No.

15 Q. Do you have a house?

16 A. No. I used to.

17 Q. When did you sell your house?

18 A. After me and my wife divorced.

19 Q. Was that the last couple of years?

20 A. Yeah.

21 Q. So --

22 A. Three years.

23 Q. Three years?

24 A. Yeah.

25 Q. But for the past seven years, at least four

1 of those years, you were paying on a house.

2 A. Yes.

3 Q. How much were those monthly payments?

4 A. \$1,000.

5 Q. Were you paying on a car?

6 A. Yes.

7 Q. How much were you paying on that car?

8 A. \$600, with insurance.

9 Q. And what kind of car was that?

10 MR. HURTADO: Objection, Your Honor,
11 relevance.

12 THE COURT: Overruled.

13 A. I had a conversion van.

14 BY MR. BOWLES:

15 Q. And aside from the house and car expenses,
16 I'm assuming you had other expenses for your
17 household? You said you had children?

18 A. Yes.

19 Q. You have food, groceries?

20 A. Yes.

21 Q. You have utilities?

22 A. Yes.

23 Q. Did you have a personal cellphone?

24 A. Yes.

25 Q. Did you have cable TV?

1 A. Yes.

2 Q. Would it be safe to say that \$1,000 for
3 your house, \$100 for your car, utilities, food and
4 everything, you have about a \$2,500 monthly budget?

5 A. Yeah, give or take.

6 Q. So that would come out to about \$30,000 per
7 year; is that right?

8 A. Yes.

9 Q. Was your wife working during those years?

10 A. She had a part-time.

11 Q. And do you know how much she was making?

12 A. Probably 100 bucks a week.

13 Q. So approximately \$400 a month. So that
14 would be \$4,800 a year, approximately?

15 A. Yeah.

16 Q. Now, the ATF agent earlier testified that
17 you were making, from payments from the ATF,
18 approximately \$17,900 a year. Does that sound about
19 right to you?

20 A. I mean, give or take. I mean, it's not
21 always like it's the whole year thing that you're
22 working, you know, working for them or traveling and
23 stuff like that. It depends if you get to go out
24 there and do something, or you stay back home and do
25 the work there.

1 Q. I thought you said earlier you get paid
2 every week in a set amount.

3 A. Yes, while you're working. While you're
4 doing something -- as long as you're bringing
5 something to the table, you get paid. If I don't
6 bring it to the table, I don't get paid.

7 Q. So it's not even certain it was \$17,000.
8 If you're not working, you're not getting paid.

9 A. Exactly.

10 Q. So you're telling the jury your only job
11 was the ATF the last seven years, but in those four
12 years you were making about \$18,000 a year, your wife
13 about \$5,000, but your expenses were about \$30,000.
14 So that's \$23,000 you're making and your expenses for
15 your household are about \$30,000. Where was that
16 other money coming from?

17 A. Expenses, going out, heating, clothes. It
18 all adds up.

19 Q. I know the expenses add up. I totally
20 agree with you on that. I'm saying, where were you
21 getting the other money to pay for that? Because
22 you're not making enough from the ATF and your wife's
23 salary.

24 A. I'm making \$1,000 a week. How am I not
25 making enough?

1 Q. You're making \$1,000 a week?

2 A. Give or take \$900 a week.

3 Q. You're saying you're make \$50,000 a year?

4 A. I mean, I don't keep track, but what comes
5 to my hands goes to my bills.

6 Q. So you're telling me you're making \$50,000
7 a year from the ATF?

8 A. But like I said, not always through the
9 whole thing when we're traveling or -- if I'm at
10 home, it's less. If I travel, it's about \$900 a
11 week.

12 Q. That's when you're really working, bringing
13 cases in?

14 A. Um-hum.

15 Q. Is that right?

16 A. Yes.

17 Q. Now, during this time I think you said you
18 also had a personal cellphone; correct?

19 A. Yes.

20 Q. And you're able to use that personal
21 cellphone for whatever you want to use it for; right?

22 A. Exactly.

23 Q. So now, I know you said -- you told the
24 jury earlier that they can believe you because
25 everything you do is recorded, but there was nothing

1 stopping you -- you can use your personal cellphone
2 during the day, during the week, during the month;
3 right?

4 A. Yes.

5 Q. And do you have just one personal cellphone
6 or do you have multiple?

7 A. It was one phone with two lines.

8 Q. One phone and two lines?

9 A. Yes.

10 Q. So the other line was not recorded?

11 A. No, it was my personal line.

12 Q. Okay. And do you have personal, like,
13 texting abilities, Snapchat, things like that?

14 A. Yes.

15 Q. So you could do all that without them
16 knowing about it; right?

17 A. Exactly.

18 Q. And you also, during this timeframe, when
19 you were under ATF contract, my understanding, you
20 were arrested for driving on a suspended license;
21 correct?

22 A. Correct.

23 Q. Now, the ATF then helped you get that
24 worked out, I know. But prior to that, you hadn't
25 told Agent Ramos that you were driving on a suspended

1 license until you got arrested; right?

2 A. I don't remember.

3 Q. Well, you were arrested, and so that
4 happened; right? You were arrested?

5 A. Yes.

6 Q. If you had told Agent Ramos before, don't
7 you think he would have helped you fix that before
8 you were arrested?

9 A. I mean, I took that upon myself. I had to
10 take my kids to school and stuff like that.

11 Q. I know. You had to drive. But your
12 license was suspended.

13 A. Yes.

14 Q. And do you know how long you were driving
15 on a suspended license?

16 A. A couple months.

17 Q. Was that because of a DWI?

18 A. It was -- DUI, you mean.

19 Q. DUI, driving under the influence.

20 A. Uh-huh.

21 Q. Is that why your license got suspended?

22 A. Yes.

23 Q. So as part of your contract with the ATF,
24 you're not supposed to commit crimes; right?

25 A. Exactly.

1 Q. And when you got arrested, what -- did you
2 tell the ATF?

3 A. I told them, but technically, it was -- it
4 said in the contract any felonies. That was a
5 misdemeanor.

6 Q. So for misdemeanors, you're saying the ATF
7 just lets you -- free pass? You can do a
8 misdemeanor?

9 A. No, no, but in the contract it says any
10 felonies, and that wasn't a felony.

11 Q. So you didn't commit a felony, so you're
12 okay.

13 A. I mean, I committed -- I shouldn't have
14 done what I've done, but I don't think that I messed
15 up with the contract.

16 Q. So you had a DWI during that timeframe;
17 right?

18 A. Yes.

19 Q. And were you drinking excessively?

20 A. Go to parties, just had a couple of beers
21 with a couple of friends.

22 Q. Pulled over, driving while intoxicated?

23 A. Yes.

24 Q. Did you have two of them during that
25 timeframe?

1 A. I beat the second one.

2 Q. You beat the second one?

3 A. Yes.

4 Q. Okay. Was that because the officer didn't
5 show up, or the agents helped you, or how did you
6 beat it?

7 A. Because they gave me a Breathalyzer test
8 and it came out to 0.000, so there was no -- I wasn't
9 intoxicated. And the judge seen that and threw it
10 out.

11 Q. But you had been drinking.

12 A. From their understanding, they thought I
13 was intoxicated, but it was because of my diabetes.

14 Q. So you're saying that you had diabetes --

15 A. I've been having it for the last 12 years.

16 Q. But you're saying that you were driving
17 while intoxicated, but they did a Breathalyzer, and
18 you didn't have -- it was 0.0?

19 A. Um-hum.

20 Q. You were drinking, though; right?

21 A. No. If I was, I would have caught another
22 case.

23 Q. You're saying your diabetes -- they thought
24 you were drunk?

25 A. Yeah, because my sugar was down. So then

1 when I start sweating, I start looking kind of blurry
2 and stuff. I usually got to park. And the reason
3 they stopped me, because I parked in a one-way, and
4 he thought I was under the influence of something.
5 And I tried to tell him, explain to him, but he ended
6 up doing what he had to do, doing his job, and I just
7 went along with it. And in the end I knew that I
8 wasn't intoxicated. I knew the judge would look it
9 and throw it out.

10 Q. Did you do time?

11 A. No, I beat it the second I went to court.

12 Q. And they dropped the charges?

13 A. Yeah.

14 Q. Did you tell the ATF about this?

15 A. No, that I remember. No. Not the second
16 time, because it was thrown out.

17 Q. Okay. But when you get arrested or
18 charged, you know you're supposed to tell the ATF
19 about this stuff, aren't you? Don't you?

20 A. If I catch a case or something. I don't
21 think I caught a crime, I did a crime or something
22 because I got arrested. I wasn't charged with it.

23 Q. Now, Confidential Informant, your call with
24 Jose Casias -- and that's call 2 on the second tab
25 that we listened to -- do you remember that call?

1 A. Yes.

2 Q. And do you remember Mr. Casias talks to you
3 and he tells you that he pushes weed? Do you
4 remember that?

5 A. Yes.

6 Q. And do you remember he says he doesn't push
7 chronic, he pushes the swag?

8 A. Yes.

9 Q. And do you remember later on, on page 13 of
10 that call, you say that you usually get two zippers?

11 A. Yes.

12 Q. So you're telling Jose -- you're basically
13 letting him know that you're trying to get two
14 zippers of methamphetamine; right? You're trying to
15 get crystal.

16 A. Yes.

17 Q. And two zippers, as we went over, is 2
18 ounces. You're trying to get 2 ounces; is that
19 correct?

20 A. Yes.

21 Q. And then later on, you told the jury that
22 you were able to connect with Daniel Carmona and
23 you're able to get those two zippers from Daniel
24 Carmona; is that right?

25 A. Yes.

1 Q. Now, when Jose Casias first talks to you
2 and he says, "I push weed, homie," did you try to get
3 any weed from him?

4 A. No.

5 Q. So the ATF, was it your instruction that,
6 "Don't worry about weed. Just go out and get
7 methamphetamine."

8 A. Or heroin.

9 Q. Or what?

10 A. Heroin.

11 Q. Okay. So if Casias is telling you he
12 pushes weed, you're not even concerned about that.
13 You're out there trying to get methamphetamine.

14 A. Right.

15 Q. Or heroin.

16 A. Yes.

17 Q. And then, after you tell him that, you're
18 not interested in weed, then basically there's more
19 calls made and Jose is trying to find -- and he got a
20 girl on Facebook, and you're trying to track down
21 somebody to get you the methamphetamine in
22 Albuquerque. Is that kind of how it happened?

23 A. I didn't ask for all that. He brought it
24 up and told me that he could do this and this for me.
25 I didn't put pressure on the issue.

1 Q. You didn't pressure him, but you said to
2 start it. Would you agree with me on this? You
3 said, "Like, I want two zippers." You're the one
4 that started that process; correct?

5 A. I was led to him to give him a call because
6 he could direct me in the right direction.

7 Q. And I understand that, but I'm saying,
8 again, to clarify, you're the one that said, "Like, I
9 want two zippers"; right?

10 A. I said I usually get two zippers.

11 Q. Usually get two zippers.

12 A. Yes.

13 Q. So on the street, you're wanting him to
14 know that what you're after is methamphetamine.

15 A. Yes.

16 Q. Now, he also talks about that he heard you
17 push black Jordans, and that means heroin?

18 A. Yes.

19 Q. And you said because you're out on the
20 street, that people thought you might be selling
21 heroin; is that right?

22 A. Yes.

23 Q. Were you selling heroin?

24 A. No.

25 Q. As part of this operation, did you sell

1 heroin to anybody?

2 A. No.

3 Q. And at any time during this operation were
4 you selling anything -- cigarettes, any other items?

5 A. I got rid of tobacco cigarettes.

6 Q. You got what?

7 A. I got rid of cigarettes.

8 Q. So you sold some cigarettes? Were you
9 making money on that?

10 A. Not really. A couple of dollars here and
11 there.

12 Q. Did you sell any other narcotics?

13 A. That's not narcotics.

14 Q. I know it's not narcotics. But I mean,
15 anything beside heroin? Did you sell any narcotics?

16 A. No.

17 Q. At any given time during this case that you
18 were working on, did you use narcotics?

19 A. No.

20 Q. Have you used any since you've been on the
21 ATF contract?

22 A. No.

23 Q. Even marijuana?

24 A. No, I don't smoke that.

25 Q. Not heroin, not meth?

1 A. No.

2 Q. And not cocaine?

3 A. No.

4 Q. Just some alcohol?

5 A. No. From time to time.

6 Q. You said that you reported all this income
7 on your tax returns; is that right?

8 A. Yes.

9 Q. Has anybody from the agency ever checked
10 your tax returns? Have they sat you down and talked
11 to you about that?

12 A. They talked to me about them, but I never
13 proceeded to need the help.

14 Q. Did you ever show them to them?

15 A. No.

16 MR. BOWLES: Your Honor, may I have just
17 one moment?

18 THE COURT: You may.

19 MR. BOWLES: Your Honor, that's all the
20 questions I have.

21 THE COURT: Thank you, Mr. Bowles.

22 Mr. Hurtado, do you have redirect of the
23 confidential informant?

24 MR. HURTADO: Yes, sir, Your Honor.

25 THE COURT: Mr. Hurtado.

REDIRECT EXAMINATION

BY MR. HURTADO:

Q. Confidential Informant, I wanted to ask you a follow-up question concerning Mr. Bowles' question on cross-exam about your personal cellphone. I think you indicated that you had an app that ATF gave you on your phone; is that correct?

A. Correct.

Q. Do you know whether the ATF ever checked your personal phone? Or how did that happen?

A. I choose the number, my personal line. I call my family, my loved ones. And the work number on there that calls people I knew on the streets records all calls at all times.

Q. Did you ever use your personal phone without the app when you were working for the ATF?

A. Yes.

Q. You did use it?

A. Yes. But I told them every time, "This guy told me on my number." I text message screen shots at all times to show them what was the discussion about.

Q. So at all times, your contacts were recorded?

A. Yes. After they came out with this app,

1 then it changed things.

2 Q. Let me ask you this. With respect to the
3 man you know as Primo, who was later identified by
4 the ATF as Daniel Carmona, would you have ever been
5 able to contact Primo if the defendant had not given
6 you his phone number?

7 A. No.

8 MR. HURTADO: Your Honor, I have no further
9 questions.

10 THE COURT: Thank you, Mr. Hurtado.
11 Anything else, Mr. Bowles?

12 MR. BOWLES: No, thank you, Your Honor.

13 THE COURT: All right, Mr. Confidential
14 Informant, you may step down.

15 Is there any reason the confidential
16 informant cannot be excused from the proceedings, Mr.
17 Hurtado?

18 MR. HURTADO: No, Your Honor.

19 THE COURT: Can he be excused, Mr. Bowles?

20 MR. BOWLES: Yes, Your Honor.

21 THE COURT: All right. You're excused from
22 the proceedings. Thank you for your testimony.

23 All right, Mr. Hurtado, does the Government
24 have its next witness or evidence?

25 MR. HURTADO: I apologize, but the

1 Government does not. The Government has two
2 witnesses left, both of whom are coming in at 8:00
3 today, so I apologize.

4 THE COURT: Well, that apology is not going
5 to do. We're at 4:10. The jury knows it's a two-day
6 trial. Are you prepared to rest? You don't run out
7 of witnesses, Mr. Hurtado.

8 MR. HURTADO: Yes, sir, Your Honor. Yes,
9 Your Honor, the United States rests.

10 THE COURT: All right. Do you have any
11 witnesses or evidence, or do you need to take
12 anything up before the jury -- before we hear from
13 the jury?

14 MR. BOWLES: Your Honor, just a motion.

15 THE COURT: All right. Why don't I excuse
16 the jury for a few moments and talk to the lawyers.
17 So we'll be in recess for about 15 minutes.

18 All rise. It may take a little longer, so
19 relax. But I need to talk to the attorneys for a
20 while.

21 (The jury left the courtroom.)

22 THE COURT: All right. Everyone be seated.

23 All right. Mr. Bowles. Do you have a
24 motion to make?

25 MR. BOWLES: Your Honor, just for the,

1 record on the distribution counts, Counts 2 and 3, I
2 think with the Court's instructions I would be moving
3 for a directed verdict that there is not sufficient
4 evidence to submit to the jury the distribution
5 counts. The evidence in the calls thus far is that
6 Mr. Leal gave him the name of Jose Casias, the call
7 was made, and the Court has heard all the calls.

8 The best evidence the Government has is
9 that the defendant gave a number for Mr. Carmona to
10 the confidential informant, who then stated he
11 couldn't have called him without that number. That's
12 about the best they could think of. But there is
13 insufficient evidence, even from those calls, that
14 Mr. Leal understood the purpose and nature. When he
15 first gave him Jose Casias' number, Mr. Casias says,
16 "I push weed," and then the confidential informant
17 turns it to a call about methamphetamine, and then
18 they get to Daniel Carmona.

19 I don't even think there is enough in the
20 light most favorable that he's distributed or aided
21 and abetted that distributing. And I would make the
22 same motion for the record on the conspiracy count.

23 THE COURT: All right. Thank you, Mr.
24 Bowles.

25 Mr. Cairns, do you have response to the

1 motion?

2 MR. CAIRNS: Yes, Your Honor. I think
3 there is more than sufficient evidence for this case
4 to go to the jury. Again, the defendant is charged
5 with three crimes. There is one count of conspiracy,
6 and there's two counts of distribution.

7 With regard to the conspiracy count, as the
8 Court is well aware, no crime actually has to occur;
9 that merely the agreement itself is a crime. I think
10 there is more than sufficient evidence in these phone
11 calls to indicate that there is an agreement between
12 Mr. Leal, Jose Casias, and Mr. Arreola-Palma, as well
13 as others that are known and unknown to the grand
14 jury. And I mean, that would include, of course,
15 Daniel Carmona, who ultimately distributes
16 methamphetamine.

17 Again, once that agreement is sealed, that
18 crime has been committed, the defendants need only
19 take -- or someone only needs to take one step in
20 furtherance of the conspiracy, and I would ask the
21 Court to observe that the actual drug transaction did
22 occur, so that would be a step in furtherance of the
23 conspiracy.

24 Moreover, after the initial information was
25 provided to Mr. Gaspar Leal, he did make a phone call

1 to Jose, and again, that is also a step forward; and
2 Jose spoke to him. Again, I understand that the
3 confidential informant is not a member of the
4 conspiracy because he's a Government actor, but Jose
5 spoke to him and said he would try and find a source
6 of crystal methamphetamine from a girl on Facebook.
7 That's a substantial step in furtherance of the
8 conspiracy. The actors were acting independent of
9 one another, because obviously, two of them are in
10 jail. So their role is to help set up the drug
11 transaction while they're incarcerated. And the role
12 of the people who were outside the jail is to
13 actually consummate the drug transaction. So there
14 is interdependence among the members of the
15 conspiracy. So the elements of the conspiracy are
16 met. In fact, they are actually met twice, once with
17 the initial phone call to Jose Casias, and then once
18 again and then twice when the information is provided
19 to him, provided to defendant Leal, which he uses to
20 contact Daniel Carmona.

21 So there are actually two conspiracies
22 involved. Defendant is only charged with conspiracy
23 in one count, but the Court would observe the dates
24 in the indictment are from July 21, 2016, and
25 continuing on or about August, 2016. Again, that

1 covers both conspiracies. The jury could find that
2 either conspiracy fits within that timeframe.

3 With regard to Counts 2 and 3 of the
4 indictment, these are distribution counts, but
5 they're charged pursuant to Title 18 United States
6 Code section 2, which is aiding and abetting. As the
7 Court's well aware, the defendant need not
8 participate in the crime himself to be guilty of
9 aiding and abetting. He merely needs to help someone
10 else commit the crime, associate himself with
11 criminal activity, have knowledge of the object of
12 the criminal activity as to what the crime involves,
13 at least some knowledge.

14 I believe all those elements are met by
15 these tape-recorded phone calls. You know, again,
16 the Government acknowledges Mr. Leal is not there
17 when the transaction occurred, but to be guilty under
18 a theory of aiding and abetting, you need not be
19 there, he need not participate in the transaction.
20 He need only associate himself with it and assist in
21 bringing it about with the knowledge that the
22 objective is to commit a crime.

23 So I would submit that there is sufficient
24 evidence on all three of these counts at least for it
25 to go to the jury, Your Honor.

1 THE COURT: All right. Thank you,
2 Mr. Cairns.

3 Mr. Bowles, do you have anything further?

4 MR. BOWLES: No, Your Honor.

5 THE COURT: Well, I think Mr. Cairns has
6 outlined well the evidence that supports the counts
7 that the Government wishes to submit to the jury. I
8 do think there is -- on some of those that Mr. Bowles
9 specifically mentioned, there is sufficient evidence
10 for a jury to find beyond a reasonable doubt that
11 there was an agreement. The fact that then the
12 confidential informant saw the fruits of that
13 conspiracy occurring. So I think the three counts of
14 the indictment on the two distribution counts -- I
15 think at least there is sufficient evidence of aiding
16 and abetting. So I think those should be submitted
17 to the jury, as well. So I'm going to deny the
18 motion for a directed verdict and allow the case to
19 proceed to the jury.

20 Mr. Bowles, do you wish to present evidence
21 or witnesses?

22 MR. BOWLES: No, Your Honor.

23 THE COURT: All right. Why don't we do
24 this. Why don't I have -- I want to make one change
25 here, because I think that when we tell the jury that

1 they can't consider the acts of other people, I think
2 we have to be a little careful with that because we
3 do have a conspiracy count here, and aiding and
4 abetting. So I think we have to rewrite that a
5 little bit to say they can consider the acts of other
6 people but only in those two instances. So see if
7 you like the language I've done. I've done different
8 things in the past, but this one -- since in this
9 case we have both aiding and abetting and conspiracy.

10 I also put in an accomplice instruction
11 here. I mean, the Government's case is heavily
12 dependent upon an accomplice. So the Tenth Circuit
13 has a pattern instruction on accomplice, and I do
14 think they should be given the cautionary instruction
15 on accomplices. So let's -- unless somebody thinks
16 otherwise, I would be inclined to include this,
17 because I do think that that should be included.

18 So if you'll give me just a few moments,
19 I'll print out the jury instructions to you and give
20 you a chance to look at them. And then I can also
21 put on the podium the instructions, the changes that
22 I made to the clean set that you have, so that you
23 can rather quickly see what I changed.

24 MR. BOWLES: Yes, Your Honor.

25 THE COURT: Anything we need to discuss

1 before we go into recess, so I can get you the
2 instructions? Mr. Cairns, Mr. Hurtado?

3 MR. CAIRNS: No, Your Honor. I'm just
4 curious as to -- obviously we're a little ahead of
5 schedule and that's our fault, or my fault, our
6 fault. But are we going to be proceeding to closings
7 today, or are we going to start first thing in the
8 morning?

9 THE COURT: What's your preference?

10 MR. CAIRNS: I would greatly prefer that we
11 start first thing in the morning, Your Honor. I'd
12 greatly prefer that. I think that both the jurors
13 and the attorneys in the case are tired. We've been
14 on our feet -- well, I should say Mr. Hurtado has
15 been on his feet most of the day, and I just feel
16 that it would be better to start first thing in the
17 morning when jurors are fresh and they're able to
18 listen to the closing arguments.

19 The Court had graciously granted me 40
20 minutes for closing argument, and then Mr. Bowles has
21 30 minutes. By the time we get through closing
22 arguments, we're going to be well on after 5:30
23 before we finish. And of course, then the jury has
24 to be charged, has to be instructed.

25 THE COURT: I think we agreed we would

1 charge before. So I guess what I was thinking is,
2 maybe we would charge and then break for the evening,
3 and then you would start your closings in the
4 morning. Does that work for you?

5 MR. CAIRNS: I have no strong objection to
6 that, Your Honor. I would say that I would prefer
7 for the jury to be read their instructions
8 immediately before closing so that the instructions
9 are fresh in their mind. But they will have copies
10 of the instructions in the room with them, so I don't
11 have a strong view on that one way or the other, if
12 the Court is inclined to instruct them before they go
13 home in order to conserve time and judicial
14 resources, and then we could come back tomorrow and
15 go ahead and go into closings, because they will have
16 copies of the instructions with them in the jury
17 room.

18 So I don't have a strong preference as to
19 that one way or the other. But generally, my weak
20 preference is: I prefer them to be instructed right
21 before closing. But again, I understand the Court is
22 trying to conserve its own time and the time of the
23 jurors who are here. I understand that.

24 MR. BOWLES: I think we should instruct
25 them tonight.

1 THE COURT: Let's see if we can. I want to
2 give you a chance to look at these instructions.
3 They're largely what you've seen and agreed to, but I
4 have pecked at them a little bit, and I want to make
5 sure that you get a chance to look them over, the
6 accomplice one, what I've done on this one with, they
7 shouldn't consider anybody else except on the
8 conspiracy; and aiding and abetting, I think that one
9 needs to be tinkered with a little bit, and the Tenth
10 Circuit comment notes. So take a look at it. If
11 they're ready to go, I think we can give them and
12 then rest for the evening, and you'd prefer to start
13 your closings in the morning?

14 MR. BOWLES: Yes, I think Mr. Cairns is
15 right. If the Court will allow that, we start in the
16 morning. I think everybody -- it went pretty good
17 today.

18 THE COURT: Let's see if we can get them
19 instructed. If we can't, we can't. But let me see
20 if we can. So let me go back here. And anything
21 else we need to discuss before we take our recess,
22 Mr. Cairns?

23 MR. CAIRNS: No, only if I'm going to have
24 an opportunity to go to the men's room.

25 THE COURT: Yeah, we're going to go into

1 recess. Let me see if I can get you a set.

2 (The Court stood in recess.)

3 THE COURT: All right. We'll go back on
4 the record. I handed you the jury instructions as
5 much as I could work on them, as well. I put here on
6 the podium, if you want to look. These are the
7 changes that were made. There were a few more
8 changes made in the footnotes, but not in the text.

9 So if you want to look rather quickly at
10 what changes were made from the one that you got this
11 morning, there they are, if that helps you.

12 And Mr. Bowles, when I reached over and put
13 yours, Mr. Leal wanted to shake my hand, and I just
14 didn't want to have any contact with him while you
15 were out of the room. But it's not that I don't want
16 to shake hands with him. I just didn't want to have
17 any contact with him.

18 MR. BOWLES: Yes, Your Honor.

19 (A discussion was held off the record.)

20 THE COURT: Back on the record. I did not
21 include the similar acts instruction because we
22 cleaned all that up with concessions on the 404(b),
23 and I didn't think that we ought to highlight
24 anything else. Do you agree with that, Mr. Bowles?

25 MR. BOWLES: I do.

1 THE COURT: Do you agree with that, Mr.
2 Hurtado?

3 MR. HURTADO: Yes, sir.

4 THE COURT: So I kept that one out.

5 Mr. Cairns, Mr. Hurtado, do you want to
6 look at the podium there? Will that help you any to
7 see what I changed from the set you got this morning?

8 If y'all will give me liberty on the
9 footnotes, I won't show you everything I do on the
10 footnotes. Those are just to kind of to make sure
11 that down the road you and the Tenth Circuit know
12 where I get this stuff. Do we need expert witness
13 testimony at all now?

14 MR. HURTADO: No, sir.

15 MR. CAIRNS: We didn't have any expert
16 witnesses.

17 MR. BOWLES: He did talk briefly about the
18 reason he used coded language.

19 THE COURT: Shall I put Mr. Ramos in there
20 on that?

21 MR. HURTADO: Sure.

22 THE COURT: So you want to take that
23 instruction and put -- I'm sorry. What was his first
24 name?

25 MR. HURTADO: Michael.

1 THE COURT: Can I just put him?

2 MR. HURTADO: Yes.

3 THE COURT: I think that description of him
4 talking about drug trafficking.

5 MR. BOWLES: Yes.

6 (A discussion was held off the record.)

7 THE COURT: All right. Why don't we go on
8 the record. If you need more time on any particular
9 one, we can come back to that. But let me just kind
10 of go through these, the set I have, and see if you
11 have any changes, suggestions, comments, or
12 objections you need to make. If I don't hear
13 anything I'll keep going. Instruction number 1,
14 instruction number 2, instruction number 3.

15 MR. CAIRNS: Your Honor, I'm sorry, let me
16 catch up with you.

17 THE COURT: All right. Take your time.

18 MR. CAIRNS: Instruction number 1,
19 instruction number 2, instruction number 3.

20 THE COURT: Number 4, I'll need to take out
21 some of this. "During the trial I did not let you
22 hear the answers." That one is probably true. I
23 sustained some objections. I didn't order anybody to
24 disregard things or struck anything from the record.

25 So what I would suggest is: I take out the

1 second sentence and unbold the rest of it. Would
2 that work for everybody? Would that work for you,
3 Mr. Cairns?

4 MR. CAIRNS: Yes, Your Honor.

5 THE COURT: Does that work for you,
6 Mr. Bowles?

7 MR. BOWLES: Yes, Your Honor.

8 THE COURT: Number 5 is pretty stock.
9 Number 6. You had a separate instruction. The Tenth
10 does it, too. I just used the one that they had, the
11 paragraph. "Mr. Leal did not testify." Just put it
12 in there.

13 Then on 7, we're going to put -- is Mr.
14 Ramos ATF Special Agent?

15 THE WITNESS: Yes.

16 THE COURT: So it will be just Michael
17 Ramos.

18 Number 8 is my informant instruction, but
19 it's based on the Tenth, just that two paragraphs.

20 MR. CAIRNS: Your Honor, I don't think that
21 the paragraph on accomplice liability is applicable
22 here. There was no testimony from an accomplice.
23 There is only testimony from an informant.

24 THE COURT: I don't see the accomplice
25 language. Do you?

1 MR. CAIRNS: It's at the very beginning of
2 the instruction. It says, "The accomplice/informant
3 immunity." The very first paragraph says, "An
4 accomplice is someone who joined" --

5 THE COURT: Are you looking at the typed
6 version, Mr. Cairns?

7 MR. BOWLES: That's not what's in the
8 instructions.

9 THE COURT: Look at number 8, the typed
10 version.

11 MR. CAIRNS: Okay. Wait a second. I may
12 not have that. Let me look real quick.

13 THE COURT: Mr. Hurtado, you have the clean
14 copy I gave you?

15 MR. HURTADO: Yes. I thought I had given
16 it to Mr. Cairns.

17 MR. CAIRNS: This has the language omitted
18 as to accomplice liability, so I apologize to the
19 Court.

20 THE COURT: Does that look okay, then, to
21 you?

22 MR. CAIRNS: Yes, Your Honor.

23 THE COURT: All right. Number 9 is the
24 transcript language in the indictment. 11 is the
25 conspiracy count.

1 MR. CAIRNS: Your Honor, if I might have
2 just a moment on that count, there are two things
3 with regard to the conspiracy count. First of all,
4 the Government would request a lesser included
5 instruction as well as to Title 21, section 846. The
6 lesser included would be -- would regard paragraph --
7 element number 5. "The overall scope of the
8 conspiracy involved at least 50 grams and more of
9 methamphetamine." I would request a lesser included
10 instruction simply that the overall conspiracy
11 involved methamphetamine. I believe that the law
12 permits for a lesser included instruction.

13 THE COURT: Any objection to that,
14 Mr. Bowles?

15 MR. BOWLES: Well, I think they may need a
16 special verdict finding.

17 THE COURT: Well, they have one.

18 MR. BOWLES: They do? Okay.

19 THE COURT: But we'll have to -- we'll
20 probably need to modify the -- all right. Let me see
21 if I can find it. It's 133. So what do I call this?
22 What do I call it? Conspiracy --

23 MR. CAIRNS: To distribute methamphetamine,
24 and it would simply say that if the --

25 THE COURT: Conspiracy to distribute

1 methamphetamine?

2 MR. CAIRNS: Yes, Your Honor.

3 THE COURT: The difference between these
4 two offenses is that to convict the defendant of
5 conspiracy to distribute methamphetamine, the
6 Government does not have to prove -- what do you want
7 it to say? The amount?

8 MR. CAIRNS: The amount, any particular
9 amount of methamphetamine.

10 THE COURT: Any particular amount.

11 (A discussion was held off the record.)

12 MR. CAIRNS: Your Honor, I'm sorry, I hate
13 to be causing additional issues. I'm just worried a
14 little bit about maybe potential appellate issues.
15 There are potentially two conspiracies that occurred
16 during the timeframe that is charged in the
17 indictment. They're actually separate conspiracies
18 involving separate individuals. I believe that we
19 may need a Richardson instruction with regard to the
20 two conspiracies, that essentially that the jury can
21 find that either one conspiracy existed or the other
22 conspiracy existed, or that both, but they must be
23 unanimously --

24 THE COURT: Why don't you write out what
25 you want. I don't really know what you're talking

1 about.

2 MR. CAIRNS: It would be a unanimity of --

3 THE COURT: Unanimity of theory?

4 MR. CAIRNS: Yes. And I believe there is a
5 Tenth Circuit pattern -- no, actually, I think you
6 have one, Your Honor, you've used before.

7 THE COURT: There's a unanimity, but it's
8 going to take some work.

9 MR. BOWLES: Judge, I don't know what the
10 evidence -- I don't know what we're referring to
11 here, why we have two conspiracies now within one
12 indictment.

13 MR. CAIRNS: Well, again, because of the
14 timeframe, the jury could find that the initial phone
15 conversation that postdates Castillo's and
16 information provided by defendant Leal to the
17 confidential informant -- that that existed as a
18 separate conspiracy. They could find, then, that
19 there is another conspiracy that arises during the
20 phone call with Arreola-Palma and with information
21 that's provided to the confidential informant about
22 Mr. Daniel Carmona. So there are actually two
23 potential -- based on the indictment and the
24 timeframe, there is a potential for them to find two
25 conspiracies in existence in the timeframe, which

1 would be fine. They could find there are two
2 conspiracies. They can also find that there was one
3 conspiracy, but they need to agree unanimously that
4 one or the other existed. They need to have a --

5 THE COURT: Well, mark up what you want and
6 let's let Mr. Bowles and I look at it.

7 Mr. Hurtado, while Mr. Cairns is working on
8 that, tell me what changes now need to be made to
9 Count 1 of the verdict form to account for the lesser
10 included offense.

11 MR. HURTADO: So Your Honor, to answer the
12 Court's question, given the way the verdict form
13 reads currently, we have Count 1, Count 2, and Count
14 3. So the United States would add a Count 4 at the
15 bottom to include the lesser included offense for the
16 conspiracy.

17 MR. CAIRNS: And that would be contingent
18 upon them failing to reach a verdict as to Count 1.

19 THE COURT: Well, why don't you work on it.
20 We need language from the Government. You're making
21 a lot of changes this evening that you didn't submit
22 to the Court. So I need language.

23 MR. CAIRNS: I've got some suggested
24 language, Your Honor.

25 THE COURT: This would be the lesser

1 included charge.

2 MR. CAIRNS: I'm sorry, this is the
3 language that I wrote out. I believe Mr. Bowles and
4 I have agreed on that.

5 THE COURT: Take a look at my language. I
6 was doing that when I was waiting for your unanimity.

7 MR. CAIRNS: We can't agree on that. And
8 I'll withdraw that.

9 MR. BOWLES: I like this instruction,
10 Judge.

11 THE COURT: Are you okay with your lesser
12 included?

13 MR. BOWLES: On the lesser included?

14 THE COURT: Here is the language I put on
15 the special verdict forms. Take a look at that.

16 MR. BOWLES: That's what I was thinking,
17 too, in the same Count 1.

18 THE COURT: See if that would work.

19 MR. BOWLES: Yeah, I was thinking the same
20 on the Count 1.

21 MR. CAIRNS: Yeah, that works for me.

22 MR. BOWLES: Yeah, I like both of these.

23 THE COURT: Are you okay on the lesser
24 included?

25 MR. BOWLES: Yes, sir.

1 MR. CAIRNS: If we can't reach an
2 agreement, I might just withdraw that. To be honest
3 with you, I'm concerned about the record on appeal.
4 I mean, we can't reach an agreement on that.

5 THE COURT: Are you going to argue to the
6 jury there are two conspiracy --

7 MR. CAIRNS: Well, I mean, I think there is
8 evidence of two.

9 THE COURT: I think you solve it by picking
10 one and going with that, and then you don't have two
11 theories going to the jury. Pick the one you like.

12 MR. CAIRNS: I think I can do that. I
13 think that's fair to Mr. Bowles. I think that's
14 fair, so I'll pick one.

15 THE COURT: So you withdraw the unanimity,
16 and we'll just pick one theory and go with that?

17 MR. BOWLES: This looks good. Thanks.

18 THE COURT: All right. Let's take a look
19 and see if we have anything else that we need to go
20 with. Then instruction number 13 is the one for
21 Counts 2 and 3. Instruction number 14 is the aiding
22 and abetting. Did you like the way I did 15, "Except
23 where you're expressly charged otherwise herein in
24 the instruction," that probably should be an S,
25 "instructions on fix conspiracy and aiding and

1 abetting"?

2 MR. BOWLES: I do. And it links back to
3 the instructions, so I think that makes sense.

4 MR. CAIRNS: I'm sorry. Where are we, Your
5 Honor?

6 THE COURT: We're on 15. I had to modify
7 that, since you're going to the jury on conspiracy
8 and aiding and abetting. I can't tell them to just
9 ignore everybody else, because they're going to be
10 determining it. So Ms. Whitten, will you on 15 put
11 "expressly charged here in the instructions on
12 conspiracy and aiding and abetting"?

13 MR. CAIRNS: I'm sorry, I've got a bunch of
14 paperwork up here.

15 THE COURT: So on your clean set of 15,
16 last two lines, "whether Mr. Leal has been proved
17 guilty of the crime charged," and this is what I
18 added, "except when you are expressly charged
19 otherwise herein in the instructions on conspiracy,
20 and aiding and abetting."

21 MR. CAIRNS: Yes, Your Honor. I have no
22 objection to that.

23 THE COURT: All right. Instruction 16 is
24 just punishment. 17 is -- I think that's pretty much
25 the Government's instruction.

1 MR. CAIRNS: Yes, Your Honor, that's what
2 we submitted.

3 THE COURT: Can you think of any other
4 suggestions or comments or objections you need to
5 make, Mr. Cairns?

6 MR. CAIRNS: No. I just want to thank the
7 Court for its patience with me. I'm sorry for the
8 requested modifications.

9 THE COURT: All right. But anything else?

10 MR. CAIRNS: No, Your Honor.

11 THE COURT: How about you, Mr. Bowles?

12 MR. BOWLES: No, Your Honor. I did want to
13 note for the record that I do agree with the Court's
14 instruction 13, and we are giving them a new verdict
15 form which includes Count 1 and includes the
16 alternatives.

17 THE COURT: All right. Any other
18 suggestions, comments, objections you to need make?

19 MR. BOWLES: I do not, Your Honor. I would
20 kind of withdraw my request to instruct them tonight.
21 But whatever the Court wants to do. But I didn't
22 realize it's now 5:10.

23 THE COURT: I think if nobody has any other
24 changes or comments or suggestions, I think it takes
25 me about 20 minutes to read a set like this, so I

1 think we'll be in good shape. Let's see if I can get
2 you a set and see what time it is.

3 MR. BOWLES: Yes, sir.

4 THE COURT: Probably what I'll do -- do you
5 want to go ahead and get the jury lined up? I will
6 give you a set and put it over here, and then
7 Ms. Whitten will bring your sets. In the beginning,
8 they'll all be the same.

9 (A discussion was held off the record.)

10 THE COURT: Mr. Bowles, when the jury comes
11 in, the first thing I will do is ask you whether you
12 have any witness or evidence you want to put on and
13 you can say you rest.

14 All right. On your sets, they're printing.
15 When Ms. Whitten gets a set, she'll bring it to you,
16 Mr. Cairns, Mr. Hurtado. You'll get the first set, a
17 clean one. There it is. Mr. Bowles, she'll bring
18 you a set.

19 MR. BOWLES: Thank you, Your Honor.

20 THE COURT: But the first few are all the
21 same.

22 All right. Anything we need to discuss
23 before we bring the jury in? Mr. Hurtado,
24 Mr. Cairns?

25 MR. HURTADO: No, sir.

1 THE COURT: How about you, Mr. Bowles?

2 MR. BOWLES: No, Your Honor.

3 THE COURT: All right. All rise.

4 (The jury entered the courtroom.)

5 THE COURT: All right. Everyone be seated.

6 All right, Mr. Bowles, does Mr. Leal have
7 any witnesses or evidence he wishes to present?

8 MR. BOWLES: Your Honor, we rest.

9 THE COURT: All right. Thank you,
10 Mr. Bowles.

11 All right, I'm going to instruct you
12 tonight, and then I'll let you go. So we're not
13 going to be here late tonight, but I will instruct
14 you, and then we'll have closing arguments in the
15 morning, and then I'll have a few more instructions
16 before you begin your deliberations.

17 (The jury was instructed.)

18 THE COURT: Let me see counsel up here at
19 the bench for a moment.

20 (The following proceedings were held at the
21 bench.)

22 THE COURT: Any objections to the charge or
23 any additional charges other than what we have
24 already discussed, Mr. Cairns?

25 MR. CAIRNS: No, Your Honor.

1 THE COURT: How about you, Mr. Bowles?

2 MR. BOWLES: Your Honor, there is no
3 objection. I think at one point -- and it's not a
4 big deal -- but on instruction 15, I think this Court
5 said, in the middle, it says, "Knowledge of the
6 underlying criminal act and intended to --"

7 THE COURT: What did I say?

8 MR. BOWLES: I think you said "or intended
9 to help him."

10 THE COURT: Which one is that?

11 MR. BOWLES: That's instruction 15.

12 THE COURT: 15.

13 MR. BOWLES: But it's not a big deal.

14 THE COURT: What did I say instead of
15 "and"?

16 MR. BOWLES: I believe you said "or." I
17 was closely watching, but I don't think it's a big
18 deal.

19 THE COURT: Why don't we put it just right
20 back up.

21 Ms. Bevel, can you put up 15 again, just
22 instruction 15?

23 (The following proceedings were held in
24 open court.)

25 THE COURT: All right. Ms. Bevel is going

1 to put number 15, and I just want to make sure I read
2 this correctly. You see in the middle it says,
3 "First: Someone else committed the charged crime,"
4 and it says "and." Just to make sure that I doesn't
5 say "or" there instead of "and." So you've got to
6 find both those elements.

7 All right. Let me see counsel.

8 (The following proceedings were held at the
9 bench.)

10 THE COURT: Any other objections to the
11 charge or any additional charges other than what
12 we've already discussed?

13 MR. CAIRNS: No, Your Honor.

14 THE COURT: How about you?

15 MR. BOWLES: No, Your Honor.

16 THE COURT: I propose this -- I didn't make
17 this the defendant. I propose to make this
18 "Mr. Leal" on instruction number 18; is that all
19 right?

20 MR. CAIRNS: Yes, Your Honor.

21 MR. BOWLES: Yes.

22 THE COURT: And I'd rather take that out,
23 "expert." I don't think that's in the pattern
24 instructions. So I'd rather "you've heard the
25 opinion testimony."

1 MR. CAIRNS: That's fine.

2 MR. BOWLES: All right.

3 THE COURT: So we'll make that one.

4 Oh, I just want to unbold that and put
5 "he." Does that work for everybody?

6 MR. CAIRNS: Yes.

7 MR. BOWLES: Yes.

8 THE COURT: Anything else? I'll send them
9 home and let y'all do closings tomorrow.

10 (The following proceedings were held in
11 open court.)

12 THE COURT: All right. So we're going to
13 let you go for the evening. Since this is our first
14 overnight break in the trial, I want to remind you of
15 a few things that are especially important. Until
16 the trial is completed, you're not to discuss this
17 case with anyone, whether it's members of your
18 family, people involved in the trial, or anyone else.
19 And this includes your fellow jurors. If y'all got
20 friendly during the day, don't start emailing each
21 other tonight.

22 If anyone approaches you and tries to
23 discuss the trial with you, please let me know about
24 it immediately.

25 Also, you must not read or listen to any

1 news reports about the trial or get on the internet
2 and do any research for purposes of this case. And
3 finally, remember that you must not talk about
4 anything with any person who is involved in the
5 trial, even if it doesn't have anything to do with
6 the trial.

7 If you need to speak with me, simply give a
8 note to one of the court security officers or Ms.
9 Bevel.

10 We're moving along. You may hear these a
11 little bit tomorrow. But if I don't remind you of
12 them, do keep them in mind when we take breaks
13 tomorrow.

14 I appreciate your hard work and all you've
15 done for us today. You've been a good group to work
16 with and I appreciate you very much. Be safe on your
17 travels, and we will see you at 8:30 in the morning.
18 I don't anticipate too much, but you might have to
19 wait a second while we're getting adjusted here. But
20 try to be in the jury room at 8:30, and Ms. Bevel
21 will come in and check on you in the morning and
22 maybe have some goodies for you. So if you do have
23 to wait, you've got a little bit to eat there.

24 So we'll see you in the jury room at 8:30.
25 Y'all have a good evening. I appreciate your hard

1 work. All rise.

2 (The jury left the courtroom.)

3 THE COURT: All right. Ms. Whitten will
4 run off copies, if you want them tonight before you
5 go so you'll have them to work in your closings. If
6 not, they'll be here in the morning. You can take a
7 look at them. We'll make those three changes.

8 Is there anything else we need to discuss,
9 Mr. Hurtado?

10 MR. HURTADO: No, Your Honor.

11 THE COURT: How about you, Mr. Bowles?

12 MR. BOWLES: No, Your Honor. May we leave
13 this?

14 THE COURT: You may. I don't think anybody
15 is going to be in here. Y'all have a good evening.
16 I appreciate your hard work.

17 (The Court stood in recess.)

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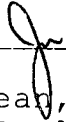
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2 STATE OF NEW MEXICO

3
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5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages constitute
8 a true transcript of proceedings had before the said
9 Court, held in the District of New Mexico, in the
10 matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 9th day of September, 2019.

13
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